IN THE

SUPREME COURT OF THE UNITED STATES

_____ TERM, 1970

NO. 1239

JOHN GIAGNOCAVO
Appellant

VS.

BUCKS COUNTY COMMISSIONERS:
Joseph Canby
Walter Farley
Charles Meredith III
Appellees

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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QUAKERTOWN, PENNA.

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JURISDICTIONAL STATEMENT

OPINION BELOW

The Opinion has not been officially or unofficially reported, as there is no Opinion, just an Order dismissing the Appeal as set forth in Appendix A.

JURISDICTION

The jurisdiction of this Court to review the judgment of the Supreme Court of Pennsylvania upholding the constitutionality of the Statute of the State of Pennsylvania and the legislative Acts of the Bucks County Commissioners (a sub-division of the State of Pennsylvania) is conferred by 28 U.S.C.A. 1257(2) especially so when it is financed by the Federal Government, and is discriminatory.

Jurisdiction of this Court is sustained by the following cases:

Reinman v. Little Rock, 237 U.S. 181 (1915)
King Mfg. Co., v. Augusta, 277 U.S.100.
Flast v. Cohen, 392 US 83 (1968).
Baker v. Carr, 369 US 186, (1962)
Baggitt v. Bullitt, 377 US 360 (1964)

STATUTE INVOLVED

This case involves a challenge to the consitutionality of the Act 247 of the 1968 General Assembly of the State of Pennsylvania, which became effective January 1, 1969, and of the legislative acts of the Bucks County Commissioners as adopted on March 19, 1969, attached hereto in Appendix A 2 & 3 respectively.

QUESTIONS PRESENTED

1. Is Act 247 of the 1968 General Assembly of the State of Pennsylvania constitutional?

2. Is the Comprehensive Plan of Bucks County, as adopted March 19, 1969, by the County Commissioners constitutional ?

3. Does a municipality have the authority , under the color of law, to use its police powers to deny civil rights to human beings when it is, in fact, discrimination against the poor, and often amounts to racial discrimination?

4. Can a State legally and constitutionally use its police powers to appropriate and apply private property without first providing just compensation, especially under the following conditions:

a. injurious to the public welfare

b. against the public policy from the beginning of world to date,in the state of Pennsylvania.

c. discriminates against the poor, and therefore against the minority groups

d. when it is unrelated to the public health or welfare?

5. Can a municipality establish a minor judiciary?

STATEMENT OF THE CASE

Appellant Ciagnocavo is a tax-paying citizen of the United States of America, and of the State of Pennsylvania, and the township of Milford in the County of Bucks.

Appellant Ciagnocavo, on March 19,1969, filed a Petition for a Writ of Mandamus, in equity, in the Court of Common Pleas of Bucks County, Pennsylvania, about four hours after the Bucks County Commissioners adopted the Comprehensive Plan, the Plan being financed in part by the Federal government. See

Appendix A 3.

On March 20, the Court granted a Rule on the Bucks County Commissioners to respond by April 7, 1969 , and set a hearing date for April 17,1969.

On April 17, a hearing was held at which time the Judge (the Honorable Edmund V. Ludwig,) disqualified himself, and continued the hearing generally. On April 23 ,1969, Judge Paul R. Beckert set the case down for a hearing on April 24, at that time over-ruling the preliminary objections, and then failed to declare Act 247 of the 1968 General Assembly void and thus unconstitutional. The preliminary injunction was also denied. This technically ended the case in the Bucks County Court. No opportunity was given to submit briefs or to argue the case on points of law before all the judges sitting at one time, which is usually done; especially so, when it involves points of law which are of constitutional nature.

In the meantime, a second suit was filed in equity which was in effect an amendment to the first suit . This was done on April 16,1969, and a Rule was granted by the Court on April 18, 1969 by Judge Paul R. Beckert. On April 25, a hearing date was requested from Judge Issac S. Garb which was refused,(this occurred in Judge Garb's chambers with Samuel Gray, Solicitor for the County Commissioners, and the Appellant.) Judge Garb refused to put this refusal in writing. Then on May 16,1969, Judge John J. Bodley refused to make the Rule absolute and issue a preliminary injunction on the motion of the Appellant for the reason being that the County Commissioners failed to respond to the Rule, This was done without an opportunity to be heard, nor was the Motion ever responded to by the Bucks County Commissioners.

Then the Appellant appealed to the Pennsylvania Supreme Court under the authority of 12 P.S. Sec. 1102; 1879 June P L 177, Sec. 1, which specifically states that appeals shall be allowed in the Supreme Court on special injunctions, etc.
There was a Petition for a Writ of Mandamus filed in the Supreme Court of Pennsylvania against the Honorable Paul R. Beckert, which was not against the Bucks County Commissioners, as was stated by Judge Beckert. (This action originated in the Pennsylvania Supreme Court and was not an appeal from the lower Court.)

The appeals were dismissed in the Supreme Court without argument and without the Court inspecting the record of the case, on August 18, 1969. The Appellant then filed a Petition for a Re-argument, (Re-consideration) and subsequently, on October 9, 1969, the re-hearing on the Re-consideration was denied. This terminated the case in the Supreme Court of Pennsylvania.

The first Notice of Appeal was filed in the Pennsylvania Supreme Court and served on Mr. Gray, Solicitor for Bucks County, on November 24, 1969. When the Appellant discovered that the Supreme Court failed to record this Notice on the docket, then the second Notice of Appeal was filed in the Supreme Court on February 2, 1970, and a copy was served on Mr. Gray.
The hearing Judge, Paul R. Beckert, in his Opinion, referred to the Milford Township Supervisor's case, No. 1190. The Milford Township Supervisor's case is an attack on the constitutionality of the adoption of a Comprehensive Plan without proper notice, and also the using of Act 247 as an invasion against Appellant's rights. (Approximately 180 persons signed the Petition support-the Appellant's Complaint.)
The document entitled Injunction is attached hereto and marked Appendix A 4. This document, certified by the Court as an

Injunction was duly served on the Milford Township Supervisors, on April 1, 1969. The hearing Judge in his Opinion is mistaken, both as to the content of the case, and the controlling law of the case. The controlling law of the case is the Municipalities Planning Code which specifically states:

> Act 247, Sec.306. When a city, borough, incorporated town or township having a comprehensive plan is located in a county which has adopted a comprehensive plan, both the county and the city, borough, incorporated town or township shall each give the plan of the other consideration in order that the objectives of each plan can be protected to the greatest possible extent.

This makes it crystal clear that the County's Comprehensive Plan is effective in townships whether or not they adopt their own comprehensive plan. Section 304 of the same Act provides that the County Planning Agency must review and make recommendations on any acts of the municipalties relative to the comprehensive plan, zoning ordinance, etc. Here Judge Beckert misconstrued the law.

Some important observations about the lower Court proceedings should also be considered. Judge John Bodley, who refused to make a Rule absolute and issue a preliminary injunction, was actually making an adjudication of one of his own acts. He was formerly a Bucks County Commissioner at the time when the first Comprehensive Plan was adopted, which forms part of the present Comprehensive Plan, and is now being challenged by the Appellant. Peter Glascott, who is now first assistant County Solicitor of Bucks was one of the former law partners of Judge Bodley.

Judge Beckert never allowed the Appellant to prove his case completely. The evidence in the record proved that there was no constructive notice given in Milford or Springfield Townships, of a hearing on the Comprehensive Plan.

The Appellant's offer of proof on page 37 of the transcipt of the hearing on April 24, 1969, was as follows: " I intend to prove that the County Commissioner's use of Act 247 was unconstitutional; their use of it is unconstitutional." Another offer of proof , " I intend to prove that the Comprehensive Plan was not generally available to the plaintiff or others." The Court refused to allow any testimony on these offers of proof. Judge Beckert also refused to allow the Appellant to testify. The hearing Judge refused to allow the Appellant to present witnesses who could give testimony that would refute the untruthful or erroneous testimony of Charles Meredith III, one of the County Commissioners. In the eyes of the Appellant, the demeanor of the hearing Judge was one of hostility and bias, and acted in a capricious manner. Subsequently, due to the foregoing, the Appellant made a motion to with draw his Complaint. The hearing Judge denied this motion, and without any further argument on the questions of fact, and the points of law, dismissed the Complaint. The Appellant therefore was denied due process of law as guaranteed under the Fourteenth Amendment of the United States Constitution.

The hearing Judge stated, on page ten, that the questions of law were not being disposed of at this hearing. However, by discharging the Complaint, he disposed of the questions of law.

The requirements of a hearing has obvious reference to the traditional judicial proceedings in which evidence is received and weighed by the trier of the facts. Morgan v. United States, 298 U.S 468, 59 Supreme Court 906.

I

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Act 247 of the 1968 General Assembly of the State of Pennsylvania contravenes Articles 5, 10 and 14 of the United States Constitution, as well as Article 1, Section 10 of the Pennsylvania Constitution.

The 14th Amendment of the United States Constitution specifically states, " ... nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction, the equal protection of law."

Article 5 of the Amendments of the United States Constitution states,

> "...nor shall private property be taken for public use without just compensation."

The Consitution of Pennsylvania, Article 1, Section 10, states,

> "... nor shall private property be taken or applied to public use without the authority of law and without just compensation being first made or secured."

And Article 2, Section 1 of the Pennsylvania Constitution:

> "The legislative power of the Commonwealth shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives."

In Miller v. Beaver Falls, 368 Pa. 192 (1951) the Supreme Court stated, " However, it must not be forgotten that all acts of the legislature and of any governmental agency are subordinate to the Constitution which is the Supreme Law of the land; and therefore no matter how desirable an act may appear, or how worthy the objective, it cannot be sustained if it is interdicted by the Constitution."

On page 27, Section 706 (1) of Act 247, the General Assembly attempts to confer power on municipalities which the General Assembly never had under the Pennsylvania Constitution, and is therefore an unauthorized delegation of a legislative power. The Pennsylvania Constitution states that the legislative power, shall reside in the General Assembly. Article 2, Sec.1. Yet the legislature has attempted to confer the following:

Section 706 (1) reads,

> The provisions of the development plan relating to (i) the use, bulk and location of buildings and structures, (ii) the quantity and location of common open space, except as otherwise provided in this article,and (iii) the intensity of use or the density of residential units, shall run in favor of the municipality and shall be enforceable in law or equity by the municipality, without limitation on any powers of regulation otherwise granted the municipality by law.

Section 705 (d)(1)

> The ordinance may require that the landowner provide for and establish an organization for the ownership and maintainence of the common open space, and that such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space) without first offering to dedicate the same to the public.

Here we see the legislator's abuse, trying to delegate powers which were excepted out of the general powers of government, by Article 1, Section 25, under the Declaration of Rights.

> Article 1, Section 1. All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

The General Assembly has provided for the health and welfare of its people by enacting the "Local Health Administration Law" Act No. 315, 1951, and the "Pennsylvania Sewage Facilities Act", No. 537, 1966, which adequately secures the provisions for health regulations.

It is a well settled principle of law that political sub-divisions of a state are not sovereign entities: Rather, they have been traditionally regarded as subordinate government institutions created by the states to assist in the carrying out of state governmental functions. See Reynolds v. Sims, 377 U S 533, 12 L Ed. 506 84 S.Ct. 1362. See also Hunter v. City of Pittsburgh, 207 U S 161. Hence, we can find no authority under the Pennsylvania Constitution or the United States Constitution to confer legislative power to either the County Commissioners or to their appointed Planning Commissions or Agencies. The County Commissioners, incidentally, appear to be unconstitutionally elected as they are not elected by a direct popular vote, but by a scheme which flies in the face of both the Baker v. Carr, 369 U.S. 186 and the Reynolds v. Sims, cited above. The Pennsylvania Constitution, Article 9, Section 4, para. 4 reads as follows: Three county commissioners shall be elected in each county. "In the election of these officers each qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected."

This allows a representation in our county government which is not directly proportional to the popular vote. It is a way of diluting the effectiveness of one's vote, and violates the equal protection clause of the United States Constitution. It becomes necessary to give this portion of the Pennsylvania Constitution federal judicial scrutiny when one considers the vast amount of federal funds which are channelled through the local county municipalities. Considering the principles as expounded in Flast v. Cohen, 392 U.S. 83 (1968) the municipalities are bound to adhere to federal constitutional standards in their conduct.

The Supreme Court of Pennsylvania has repeatedly stated that the legislature cannot abdicate or delegate this power, because it is vested exclusively in the legislature. The Constitution of Pennsylvania vests all power to pass laws in the General Assembly. Article 2, Section 1.

In Bell Telephone of Pa. v. Driscoll, 343 Pa. 191, Syllabus 5,

> Where the legislature delegates authority to an administrative body, it must surround such authority with definite standards, policies and limitations to which such administrative body must strictly adhere; and if legislature fails to prescribe with reasonable clarity the limits of the power delegated or if those limits are too broad, its attempt to delegate is a nullity.

It was stated in Holgate Bros. Co. v. Bashore, 331 Pa. 255, Syllabus 2 ... the legislature may not abdicate, transfer, or delegate its authority or duty to another branch of government, regardless of the urgency of the necessity at hand or the gravity of the situation.

The powers of the national government are limited to those as granted by the Constitution. In Schechter Poultry Corp., 295 US 495 - 555, the Supreme Court of the United States specifically stated, " Extraordinary conditions do not create or enlarge constitutional power, and cannot justify governmental action outside the sphere of constitutional authority."
In light of the foregoing, it would seem abundantly clear that there is no permissible delegation of legislative power.

Appellant asserts that Act 247 has given powers into the local municipalities of fencing out racial groups as well as other minority groups, (a fuller discussion follows on page 19).

> "When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."
> Baker v. Carr, 369 U.S. at 231.

U.S. Rep. Edward G. Biester, Jr. expresses his opinion that discrimination is caused by planning and zoning. See Appendix A 9.

It is prudent to give further scrutiny to the Pennsylvania Constitution in which the people of Pennsylvania, through the Constitution, have recognized the dangers of the transgression of high powers in governments, and have, in Article 1, Section 25, adopted the following:

> "To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

Also Article 26:

> "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

Here we can see, in Article 1, Section 25, above, that all branches of the government, whether they be legislative, judicial or executive cannot interfere or cloud the rights as are enumerated in Article 1, Sections 1 to 25.

> "... nor shall private property be taken without just compensation being first made or secured."

In City of Birmingham v. Monk, 185 F 2d 859, the Court stated, " A basic objective sought to be effected by the framers of the Fourteenth Amendment was freedom from discrimination by the states and municipalities in enjoyment of property rights."

In Erdman v. Mitchell, 207 Pa. 92, " So the same courts are still bound to protect the humblest mechanic or laborer in his right to acquire property." It further stated, " Such combination is a despotic and tyrannical violation of the indefeasible right of labor to acquire property which courts are bound to restrain."

The federal nexus of the case is further enlarged by the fact that the Appellant is a federal taxpayer, and federal funds are being used to Appellant's injury to his constitutional rights under both the federal and Pennsylvania Constitution.

In Flast v. Cohen, 392 U S 83,(1968) the Court recognized that a federal taxpayer has a clear stake to challenge the unconstitutionality of federal spending when it involves the first Amendment. There seems to be no good reason why this should not apply to the rest of the Amendments dealing with personal rights.

In light of the foregoing, Act 247 of the 1968 General Assembly is clearly unconstitutional, and contravenes Articles 5, 9 and 14 of the United States Constitution, and also Article 1, Section 25 of the Constitution of the State of Pennsylvania. It is also a well recognized principle of law that a state in the exercise of its police powers is not above the federal Consitution, and that the residual police power reposes in the States, and not in any of its political subdivisions. See Bon-Air Estates,Inc. v. Building Inspector of the Town of Ramapo, 298 N.Y. S.2d 763, (1969).

CONCLUSION

The federal questions are substantial. Act 247, Article 1 to Article 9, the Appellant urges this Court to declare unconstitutional, null and void, being that it is repugnant to Article 2, Section 1, and Article 1, Section 26, of the Pennsylvania Constitution, and also because it contravenes Article 5 and 14 of the Amendments of the United States Constitution.

Additional reasons are that the Bucks County Comprehensive Plan is arbitrary in that it has allocated over 80 % of its land for rural or greenbelt areas, and that Act 247 lacks sufficient standards to avoid unreasonable, unconstitutional and illegal ordinances by municipalities. (See Notes (1) and (2) on the following pages.

The following are examples of where Act 247 is unreasonable, vague, lacking in standards, and therefore is an unconstitutional delegation of legislative power.

Article 1, Section 103, vague and unreasonable and is contradictory to Article 12. Section 106, unreasonable, allows the Planning Commission to receive gifts from private individuals, offers a fine opportunity to favor special interest groups. Article 2, Section 201, no standards, completely arbitrary acts whether to create or to abolish a planning agency. Section 202, broad power, no standards for appointments, no check on appointments, no oath to uphold the Constitution required. Conflict of interests could be had without being fatal. Section 209, unreasonably broad powers with no standards in most cases. For example , (b) (3) , then see Section 503. The subdivision and land development ordinance may include, but need not be limited to: Then proceed to Section (3) Provisions governing the standards by which streets shall be graded and improved, and walkways,curbs,gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plats. (The other improvements and the standards are the arbitrary parts of this act. The whims of the planning commission or the county commissioners are what the developer must contend with. The hearings that are held for this type of ordinances in this particular act are usually of the public discussion type; no opportunity is given to cross-examine people who make statements which have no basis in fact; no oaths are administered. Usually the bureaucratic machine has a few persons briefed to say the appropriate thing. There are no standards for evaluating the testimony that may come from a hearing.)

NOTES (1)

Section 306, vague and indefinite, arbitrary.

Article 5, Section 509, landowner is required to put up a bond to improve one's own land, unreasonable ... arbitrary.

Article 6, Section 603, Zoning ordinances may permit , prohibit, regulate, restrict and determine: In addition-... "4. Such other provisions as may be necessary to implement the purposes of this act." An unlimited amount of power over the use of one's land, with no standards set .

Article 7, No standards or guide lines, no limitation of power, unreasonable and arbitrary.

Article 9, Section 901, No standards or qualifications set for a hearing board member, a purely arbitrary of the governing body (6)"formal rules of evidence shall not apply,"unreasonable.

NOTE: (2)

II

THE BUCKS COUNTY COMPREHENSIVE PLAN IS UNCONSTITUTIONAL

The Bucks County Comprehensive Plan was an act adopted on March 19, 1969, by the Bucks County Commissioners, purportedly under the authority of Act 247 as heretofore described; said Act became effective January 1, 1969. It is the Appellant's contention that such Plan was adopted without the authority of statutory law and without the authority of the Pennsylvania Constitution, or the United States Constitution, and is also contrary to the doctrine of natural rights which has been recognized as an element of public policy before the foundation and adoption of the United States and Pennsylvania Constitutions.

The Plan is essentially a Master Plan for Bucks County, for its development, and forms the basis for zoning ordinances which carry criminal penalties as high as misdemeanors for its violation.

It is, in effect, the statement and philosophies and convictions of the Bucks County Planning Commission. The Commission is composed of people appointed by the Bucks County Commissioners. These appointments rest in the hands of the Commissioners only. There is no review or confirmation necessary from any other governmental body.

Act 247, Section 301, specifically states that the planning agency shall draw or prepare the Comprehensive Plan for the development of the municipalities. It also states that the Comprehensive Plan shall include but need not be limited to, the following basic elements. It then lists five elements. The Planning Commission is therefore not limited to what they may incorporate in this Plan.

The Bucks County Plan was not developed by only the Planning Commission. Parts of it were prepared by Willard S. Deteiler, Jr. and A. Gershen Associates. Thus the scope of the Plan reflects the philosophies of people who are neither residents of Bucks County, nor are they appointed by the County Commissioners.

The Planning Commission members shall serve without compensation, pursuant to Section 202 of Act 247. (However, the Planning Director receives a salary of $ 23,000.00 a year; his first assistant receives $ 17,000.00 a year. The budget for 1968 was approximately $ 775,000.00).

The Plan is unconstitutional in that the Planning Commission does not represent all classes of society, nor is there any limitation of what the Comprehensive Plan shall contain. The Plan is unreasonable, arbitrary and capricious.

1. Act 247 is an unauthorized delegation of legislative power to the County Commissioners and to the Planning Commission.

2. No person in the lower income bracket could serve on the Planning Commission and contribute a reasonable amount of time thereto, because the law allows for no renumeration. Therefore, the Planning Commission reflects the conviction of the money-power group which is in no way representative of the people, and is therefore discriminatory.

The Plan does, in fact, discriminate, because the people on the Planning Commission reflect the philosophy of those who have a great passion for things, more so than a compassion for people.

PROOF: Page 46 of the Comprehensive Plan, or see EXCERPTS, Appendix A 6

> "Rural greenbelts around the area of developments are proposed for the following reasons - to protect the rural character of Bucks County ... to encourage compact development to save land for future development."

. " Residential use within the rural area shall be confined largely to farmsteads, country estates,... lot sizes shall be measured in acres, core and suburban type facilities, such as public water and sewer should be discouraged to prevent the pressure for development."

Our Supreme Court of Pennsylvania stated, " Desire of many residents of keeping an area the way it was did not rise to the level of public welfare. National Land & Investment Co. v. Kohn, 215 A 2d 597.

Enlargement of the rights of one or more persons is a discrimination against the rights of the others. 375 F 2d 714.

Here we can see that the Planning Commission had compassion for the rich people, as it did not destroy their ability to live in a rural atmosphere, but allowed them, the rich, to benefit at the expense of the poorer people. In this respect, the Plan is extremely discriminatory, that, by taking out of the market place a large portion of land for residential development and attempting to concentrate some people in compact areas. It leaves no alternative for a person with a limited amount of capital but to be confined to areas in which there are rental units available. Therefore, the poor people are enslaved by the schemes of the Planners, the wealthy landowners may hold onto their land for capital appreciation, and use their equity to obtain money from the federal government to finance apartment houses in the "compact areas" where the porr people are forced to live. The middle class landowner who needs his land for income is restricted from using his land to build modest priced homes, or to operate any other small businesses, because his land is appropriated as open space, rural or greenbelt. He eventually is forced to sell his land because he cannot realize a reasonable amount of income from it. Who can afford to buy the land? Only the rich, because the cost of subdividing is prohibitive because of his limited capital. (Recently a man was forced to sell his property because of ill health, and the death of his wife. It cost him fifteen hundred dollars to subdivide to the specifications of the Bucks County Planners, for a plot of ten acres.) These

schemes take land out of the marketable reach of most people, and are injurious to the public welfare.

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> " The tax base may be broadened by attracting single persons, childless couples, and older adults through the facilities suited to their needs."

> "Zoning is tool in hands of governmental bodies enabling them to more effectively meet demands of evolving and growing communities, but zoning provisions may not be used to avoid increased responsibilities and economic burdens which time and natural growth invariably bring". National Land & Investment Co., v. Kohn, 215 A 2d 597.

This inherently discriminates against the families with children, and puts a dollar sign on people. This is certainly unreasonable. The scheme promotes the welfare of a few by unjust enrichment at the expense of the general populace. If a scheme discriminates against the lower income families, it inherently is discrimination against minority groups, and is, in effect, a color discrimination in disquise. Is this zoning land or is it the zoning of people ? Is this congruent to the ideas of liberty as envisioned by Thomas Jefferson when he wrote the Declaration of Independence, " We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." He further stated, " Whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it." See also Chisholm v. Georgia, 2 US (2 Dall) 419 (1793) where Judge Cushing stated, ... the rights of the individual, and the justice due them, are as dear and precious as those of the states. In deed, the latter are founded upon the former; and the great end and object of them must be to secure and support the rights of the

individuals, or else vain is government."

There is great historical significance behind Article 1, Section 25, and Article 2, Section 1 of the Pennsylvania Constitution, excepting certain things out of the hands of the legislators, as well as delegating legislative power only to the General Assembly, and also the prohibitions of the 5th and 14th Amendments to the United States Constitution.

See U. of Pa. Law Review, Vol. 117,No.4 Feb.1969, 536-537.

> "There is no need to assume that Englishmen who were preparing to shed their blood in defense of their rights against royal arbitrariness were ready to suffer arbitrariness at the hands of their own elected government. They turned to Parliament because they trusted it to protect their rights against royal despotism, not to substitute parliamentary tyranny. As Jefferson was to say many years later, after the battle against Parliament had been won, and the issue was arbitrariness of state legislatures, 'An elective despotism was not the government we fought for'".

Our own Chief Justice Bell, in a recently dissenting opinion stated, " One may appropriately ask whether many authorities throughout Pennsylvania haven't forgotten the constitutional guarantees of private property which for centuries has been one of the great pillars or hallmarks of western civilization." Whitehall Twp. v. Oswald, 400 Pa. 60,page 72.

A Republican form of government is one that is constructed on the principle that supreme power resides in the body of the people. 2 Dallas 419 Rose notes,U S Reports, page 9. The County Commissioners completely ignored this principle, by ignoring the wishes of the unzoned townships in which the Comprehensive Plan was to form the basis of zoning. The evidence is contained in Appendix A,7,8,which are legal petitions of over 51 % of the landowners who are opposed to any type of zoning. The Appendix A,7,8,contains the first cover of each of the Petitions.

The repressive effect which zoning and planning is having on Bucks County is evidenced by the literature as attached in

Appendix A 9 shows clearly that discrimination is rampant in Bucks County, as expressed by the views of U.S. Representative Edward G. Biester, Jr. He specifically says that planning and zoning are the causes of this discrimination.

In Wesberry v. Sanders, 376 U S 1, the Court stated,

> "A fundamental principle of representative government in this country is one of equal representation for equal number of people without regard of sex, race, economic status or place of residence within a state."

Reynolds v. Sims, 377 U S 553 12 L ed 2d 506,84 S.Ct. 1362.

> "Legislators represent people, not trees or acres, not farms or cities, or economic interests. One must also be aware that the Constitution forbids sophisticated as well as simple modes of discrimination."

For further discussion on the equal protection clause and the need for a constitutional standard, see page 558, Vo. 117, of the U. of Pa. Law Review. See also The Other America, by Michael Harrington, page 146, para. 4. " The President's Civil Rights Commission in 1959 reported that the suburban zoning laws keep out low income housing and force the poor to remain in the decaying, central area of the cities. The very development of the metropolitan areas thus has the tendency to lock the door on the poor."

Another seemingly valid conclusion is borne out in Strangers Next Door, by Robin M. Williams, Jr., page 304. " It bears repeating that the notion of a minority group does not refer to all deprived, disadvantaged, or discontented groupings or social categories; these may be class groupings, occupational categories, political parties, and many others. Minorities rather are any culturally or physically distinctive and self-conscious social aggregates, with hereditary membership and a high degree of endogamy, which are subject to political or economic, or social discrimination by a dominant segment of an environing political society."

When one considers the above conclusion and all of the foregoing, and is reminded of what this Court stated in the closing pages of Sweezy v. State of N. Hampshire, 354 US 234 1 L ed 2d 1311, S.Ct. 1203.

" The provisions of the Constitution are not time worn adages or hollow shibboleths. They are vital, living principles that authorize and limit governmental powers in our nation. They are the rules of government. When the constitutionality of an act of Congress is challenged in this Court, we must apply these rules. If we do not, the words of the Constitution becomes little more than good advice."

CONCLUSION

Therefore, in the light of the foregoing, we urge this Court to find the Comprehensive Plan of Bucks County unconstitutional, null and void, being discriminatory, arbitrary and injurious to the public welfare, and for the lack of constitutional power to enact the same, being that Act 247 is repugnant to Article 2, Section 1, and Article 1, Section 25 of the Pennsylvania Constitution, and also to Amendments 5 and 14 of the Constitution of the United States of America.

Appellant respectfully urges that the federal questions raised by this Appeal are substantial and of great public importance. Questions 3 and 4 have not been dealt with individually, however, they are incorporated in Questions 1 and 2, and the affirmative action of the Court settles Question 5.

Appellant respectfully requests that this Court take into consideration that this Appeal is prosecuted pro se, and that this Court should note probable jurisdiction, hear the case, and reverse the decision of the lower courts.

Respectfully submitted,

John Giagnocavo
Appellant

R.D.2, Quakertown, Penna.
215 -536-4050

October 14, 1969

Mr. John Giagnocavo,
R. D. #2,
Quakertown, Pennsylvania 18951

In Re: John Giagnocavo, Appellant v. Bucks County Commissioners, Joseph Canby, et al.
Nos. 44 and 63, January Term, 1970

Dear Sir:

This is to advise that the following Order has been endorsed on the Petition for Reconsideration of the Order, dated August 18, 1969, Dismissing the Appeals in the above captioned cases:

"10/9/69.

Petition denied.

s/ Per Curiam."

Very truly yours,

Prothonotary

PNB:ENT

cc: Samuel S. Gray, Jr., Esq.,
County Solicitor, Bucks County,
521 Administration Building,
Doylestown, Pennsylvania 18901

APPENDIX A

Bolton said ... wall can hold them out." ... house communities, parks

No. 247

AN ACT

SB 1148

To empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second [1] classes and counties of the second class A through eighth [1] classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts.

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Article	X	Zoning Appeals to Courts
Article	XI	Joint Municipal Planning Commissions
Article	XII	Repeals

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I

General Provisions

Section 101. Short Title.—This act shall be known and may be cited as the "Pennsylvania Municipalities Planning Code."

Section 102. Effective Date.—This act shall take effect January 1, 1969.

Section 103. Construction of Act.—The provisions of this act, as far as they are the same as those of existing laws, are intended as a continuation of such laws except for those portions of the laws which are specifically repealed. However, the repeal by this act of any act of Assembly, or part thereof, shall not revive any act or part thereof, heretofore repealed or superseded by law. The provisions of this act shall not affect any act done, contract executed or liability incurred prior to its effective date, or affect any suit or prosecution pending or to be instituted, to enforce any right, rule, regulation, or ordinance or to punish any offense against any such repealed laws or against any ordinance enacted under them. All ordinances, resolutions, [2] regulations and rules made pursuant to any act of Assembly repealed by this act shall continue in effect as if such act had not been repealed.

Section 104. Constitutional Construction.—The provisions of this act shall be severable, and if any of its provisions shall be held to be

[1] "class" in original
[2] "regulations" not in original

unconstitutional, the validity of any of the remaining provisions of this act shall not be affected. It is hereby declared as the legislative intention that this act would have been adopted had such unconstitutional provision not been included therein.

Section 105. Purpose of Act.—It is the intent, purpose and scope of this act to protect and promote safety, health and morals; to accomplish a coordinated development of municipalities, other than cities of the first and second class; to provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic, practical, and social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions; to guide uses of land and structures, type and location of streets, public grounds and other facilities; and to permit municipalities, other than cities of the first and second class, to minimize such problems as may presently exist or which may be foreseen. It is the further intent of this act that any recommendations made by any planning agency to any governing body shall be advisory only.

Section 106. Appropriations, Grants and Gifts.—The governing body of every municipality is hereby authorized and empowered to make such appropriations as it may see fit, to accept gifts, grants or bequests from public and private sources for the purpose of carrying out the powers and duties conferred by this act, and to enter into agreements regarding the acceptance or utilization of such grants, gifts or bequests.

Section 107. Definitions.—As used in this act, except where the context clearly indicates otherwise, the following words or phrases have the meaning indicated below:

(1) "Applicant," a landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors and assigns.

(2) "Application for development," every application, whether preliminary or final, required to be filed and approved prior to start of construction or development including but not limited, to an application for a building permit, for the approval of a subdivision [1] plat or plan or for the approval of a development plan.

(3) "Appointing authority," the mayor in cities; the chairman of the board of commissioners in counties; the council in incorporated towns and boroughs; the board of commissioners in townships of the first class; and the board of supervisors in townships of the second class.

(4) "Common open space," a parcel or parcels of land or an area of water, or a combination of land and water within a development site and designed and intended for the use or enjoyment of residents of the planned residential development, not including streets, off-street parking areas, and areas set aside for public facilities. Common open space shall be substantially free of structures but may contain such improvements as are in the development plan as finally approved and as are appropriate for the recreation of residents.

[1] "plot" in original

(5) "City" or "cities," cities of the second class A and third class.

(6) "County," any county of the second class A through eighth classes.

(7) "Development plan," the provisions for development of a planned residential development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the development plan" when used in this act shall mean the written and graphic materials referred to in this definition.

(8) "Developer," any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

(9) "Engineer," a professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the engineer for a municipality, planning agency, or joint planning commission.

(10) "Governing body," the council in cities of the second class A, third class, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board of commissioners in counties of the second class A through eighth classes.

(11) "Land development," (i) the improvement of one or more contiguous lots, tracts or parcels of land for any purpose involving (a) a group of two or more buildings, or (b) the division or allocation of land between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, building groups or other features; (ii) a division of land into lots for the purpose of conveying such lots singly or in groups to any person, partnership or corporation for the purpose of the erection of buildings by such person, partnership or corporation.

(12) "Landowner," the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee having a remaining term of not less than forty years, or other person having a proprietary interest in land, shall be deemed to be a landowner for the purposes of this act.

(13) "Municipality," any city of the second class A or third class, borough, incorporated town, township of the first or second class, and county of the second class A through eighth [1] class.

(14) "Planned residential development," an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, the development plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in any one residential district created, from time to time, under the provisions of a municipal zoning ordinance.

(15) "Planning agency," a planning commission, planning department, or a planning committee of the governing body.

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[1] classes in original

(16) "Plat," the map or plan of a subdivision or land development, whether preliminary or final.

(17) "Public grounds," includes (i) parks, playgrounds and other public areas; and (ii) sites for schools, sewage treatment, refuse disposal and other publicly owned or operated facilities.

(18) "Public notice," notice given not more than thirty days and not less than fourteen days in advance of any public hearing required by this act. Such notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing.

(19) "Street," includes street, avenue, boulevard, road, highway, freeway, parkway, lane alley viaduct and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private.

(20) "Structure," any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

(21) "Subdivision," the division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership or building or lot development: Provided, however, That the division of land for agricultural purposes into parcels of more than ten acres, not involving any [1] new street or easement of access, shall be exempted.

ARTICLE II
Planning Agencies

Section 201. Creation of Planning Agencies.—The governing body of any municipality shall have the power to create or abolish, by ordinance, a planning commission or planning department, or both. An ordinance which creates both a planning commission and a planning department shall specify which of the powers and duties conferred on planning agencies by this act; each shall exercise and may confer upon each additional powers, duties and advisory functions not inconsistent with this act. In lieu of a planning commission or planning department, the governing body may elect to assign the powers and duties conferred by this act upon a planning committee comprised of members appointed from the governing body. The engineer for the municipality, or an engineer appointed by the governing body, shall serve the planning agency as engineering advisor.

Section 202. Planning Commission.—If the governing body of any municipality shall elect to create a planning commission, such commission shall have not less than three nor more than nine members. All members of the commission shall serve without compensation, but may be reimbursed for necessary and reasonable expenses. However, elected or appointed officers or employes of the municipality shall not, by reason of membership thereon, forfeit the right to exercise the powers, perform the

[1] news in original

duties or receive the compensations of the municipal offices held by them during such membership.

Section 203. Appointment, Term and Vacancy.—All members of the commission shall be appointed by the appointing authority of the municipality. All such appointments shall be approved by the governing body, except where the governing body is the appointing authority. The term of each of the members of the commission shall be for four years, or until his successor is appointed and qualified, except that the terms of the members first appointed pursuant to this act shall be so fixed that on commissions of eight members or less no more than two shall be reappointed or replaced during any future calendar year, and on commissions of nine members no more than three shall be so reappointed or replaced. The chairman of the planning commission shall promptly notify the appointing authority of the municipality concerning vacancies in the commission, and such vacancy shall be filled for the unexpired term.

Section 204. Members of Existing Commissions.—The members of any existing planning commission established under former laws shall continue in office until the end of the term for which they are appointed; their successors shall be appointed as provided by this act. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term according to the terms of this article. Should the governing body of any municipality determine to increase the number of members of an already existing planning commission, the additional members shall be appointed as provided in this article. If the governing body of any municipality shall determine to reduce the number of members on any existing planning commission, such reduction shall be effectuated by allowing the terms to expire and by making no new appointments to fill the vacancy. Any reduction or increase shall be by ordinance.

Section 205. Membership.—All of the members of the planning commission shall be residents of the municipality. On all planning commissions appointed pursuant to this act, a certain number of the members, designated as citizen members shall not be officers or employes of the municipality. On a commission of three members at least two shall be citizen members. On a commission of four or five members at least three shall be citizen members. On a commission of either six or seven members at least five shall be citizen members, and on commissions of either eight or nine members at least six shall be citizen members.

Section 206. Removal.—Any member of a planning commission once qualified and appointed may be removed from office for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body which appointed the member, taken after the member has received fifteen days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing. Any appointment to fill a vacancy created by removal shall be only for the unexpired term.

Section 207. Conduct of Business.—The commission shall elect its own chairman and vice-chairman and create and fill such other offices

as it may determine. Officers shall serve annual terms and may succeed themselves. The commission may make and alter by laws and rules and regulations to govern its procedures consistent with the ordinances of the municipality and the laws of the Commonwealth. The commission shall keep a full record of its business and shall annually make a written report by March 1 of each year of its activities to the governing body. Interim reports may be made as often as may be necessary, or as requested by the governing body.

Section 208. Planning Department Director.—For the administration of each planning department, the appointing authority may appoint a director of planning who shall be, in the opinion of the appointing authority, qualified for the duties of his position. Each such appointment shall be with the approval of the governing body, except where the governing body is the appointing authority. The director of planning shall be in charge of the administration of the department, and shall exercise the powers and be subject to the [1] duties that are granted or imposed on a planning agency by this act, except that where a municipality creates both a planning commission and a planning department, the director of planning shall exercise only those powers and be subject to only those duties which are specifically conferred upon him by ordinance enacted pursuant to this article.

Section 209. Powers and Duties of Planning Agency.—(a) The planning agency shall have the power and shall be required to:

(1) Prepare the comprehensive plan for the development of the municipality as set forth in this act, and present it for the consideration of the governing body;

(2) Maintain and keep on file records of its action. All records and files of the planning agency shall be in the possession of the governing body.

(b) The planning agency shall:

(1) Prepare and present for consideration to the governing body of the municipality, and, after adoption, maintain for the governing body an official map, and make recommendations to the governing body on proposed changes in such map as set forth in this act;

(2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it as set forth in this act;

(3) Prepare and administer subdivision and land development regulations as set forth in this act;

(4) Prepare and administer planned residential development regulations as set forth in this act;

(5) Prepare and present to the governing body of the municipality a building code and make recommendations to the governing body on proposed amendments thereto;

(6) Prepare and present to the governing body of the municipality a housing code and make recommendations to the governing body on proposed amendments thereto;

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[1] duris in original

(7) Submit to the appointing authority of the municipality a recommended capital improvements program.

(8) Promote public interest in, and understanding of, the comprehensive plan and planning;

(9) Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals;

(10) Hold public hearings and meetings.

(11) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.

(12) In the performance of its functions enter upon any land to make examinations and surveys either after permission has been obtained from the owner or after public notice.

(13) Do such other act or make such studies as may be necessary to fulfill the duties and obligations imposed by this act.

(c) In the performance of its powers and duties any act or recommendation of the planning agency which involves engineering consideration, shall be subject to approval of the engineer.

Section 210. Administrative and Technical Assistance.—The appointing authority may employ administrative and technical services to aid in carrying out the provisions of this act either as consultants on particular matters or as regular employes of the municipality. A county planning agency, with the consent of its governing body may perform planning services for any city, borough, incorporated town or township whose governing body requests such assistance and may enter into agreements or contracts for such work.

Section 211. Assistance.—The planning agency may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the Commonwealth or the Federal government or any of their agencies, or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

ARTICLE III

Comprehensive Plan

Section 301. Preparation of Comprehensive Plan.—The planning agency shall prepare and maintain a comprehensive plan for the development of the municipality. The comprehensive plan, consisting of maps, charts and textual matter, shall indicate the recommendations of the planning agency for the continuing development of the municipality. The comprehensive plan shall include, but need not be limited to, the following related basic elements:

(1) A statement of objectives of the municipality concerning its future development;

(2) A plan for land use, which may include the amount, intensity, and character of land use proposed for residence, industry, business, agriculture, major traffic and transit facilities, public grounds, flood plains and

other areas of special hazards and other similar uses;

(3) A plan for movement of people and goods, which may include expressways, highways, local street systems, parking facilities, mass transit routes, terminals, airfields, port facilities, railroad facilities and other similar facilities or uses;

(4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, libraries, water supply, sewage disposal, refuse disposal, storm drainage, hospitals, and other similar uses; and

(5) A map or statement indicating the relationship of the municipality and its proposed development to adjacent municipalities and areas.

In preparing the comprehensive plan the planning agency shall make careful surveys and studies of existing conditions and prospects for future growth in the municipality.

Section 302. Adoption of Comprehensive Plan.—The governing body shall have the power to adopt and amend the comprehensive plan as a whole or in parts. Before adopting or amending a comprehensive plan, or any part thereof, there shall be at least one public hearing pursuant to public notice. The adoption of the comprehensive plan, or any part thereof, or any amendment thereto, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the governing body. The resolution shall refer expressly to the maps, charts, textual matter, and other matters intended to form the whole or part of the plan, and the action shall be recorded on the adopted plan or part.

Section 303. Legal Status of Comprehensive Plan Within the Jurisdiction that Adopted the Plan.—Following the adoption of the comprehensive plan or any part thereof by the governing body, pursuant to public notice, any proposed action of the same governing body relating to:

(1) The location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or watercourse;

(2) The location, erection, demolition, removal or sale of any public structure located within the municipality; or

(3) The adoption, amendment or repeal of an official map, subdivision and land development ordinance, zoning ordinance or planned residential development ordinances shall be: (i) submitted to the planning agency for its recommendations and (ii) specifically found by the governing body to be in accordance with the spirit and intent of the formally adopted portions of the comprehensive plan before final action shall be taken by the governing body.

The recommendations of the planning agency shall be made in writing to the governing body within thirty days.

Section 304. Legal Status of the County Comprehensive Plans Within Municipalities.—Following the adoption of a comprehensive plan or any part thereof by a county, pursuant to a public notice, any proposed action of the governing body of a municipality within the county relating to (i) the location, opening, vacation, extension, widening, narrowing or enlargement of any street, public ground, pierhead or water-

course; (ii) the location, erection, demolition or sale of any public structures located within the municipality; or (iii) the adoption, amendment or repeal of any official map, subdivision or land ordinance, zoning ordinance or planned residential development ordinance shall be submitted to the county planning agency for its recommendations. The recommendation of the planning agency shall be made to the governing body of the municipality within thirty days.

Section 305. The Legal Status of Comprehensive Plans Within School Districts.—Following the adoption of a comprehensive plan or any part thereof by any municipality or county governing body, pursuant to public notice, any proposed action of the governing body of any school district located within the municipality or county relating to the location, demolition, removal or sale of any school district structure or land shall be submitted to the municipal or county planning agency for its recommendations. The recommendations of the planning agency shall be made in writing to the governing body of the school district within thirty days.

Section 306. Municipal and County Comprehensive Plans.—When a city, borough, incorporated town or township having a comprehensive plan is located in a county which has adopted a comprehensive plan, both the county and the city, borough, incorporated town or township shall each give the plan of the other consideration in order that the objectives of each plan can be protected to the greatest extent possible.

ARTICLE IV
Official Map

Section 401. Grant of Power.—The governing body of each municipality shall have the power to make or cause to be made surveys of the exact location of the lines of existing and proposed public streets, watercourses and public grounds, including widenings, narrowings, extensions, diminutions, openings or closing of same, for the whole of the municipality and, by ordinance, to adopt such surveys as the official map, or part thereof, of the municipality. The governing body, by amending ordinances, may make additions or modifications to the official map, or part thereof, by adopting surveys of the exact location of the lines of the public streets, watercourses or public grounds to be so added or modified and may also vacate any existing or proposed public street, watercourse or public ground contained in the official map, or part thereof.

Section 402. Adoption of the Official Map and Amendments Thereto.—Prior to the adoption of any survey of existing or proposed public streets, watercourses or public grounds as the official map, or part thereof, or any amendments to the official map, the governing body shall refer such surveys and amendments to the planning agency for review. The planning agency shall report its recommendations on said proposed official map, part thereof, or amendment thereto within forty days unless an extension of time shall be agreed to by the governing body, before voting on the enactment of the proposed official map, part thereof, or amendment thereto, shall hold a public hearing thereon. The governing body shall give public notice of such hearing.

Section 403. Effect of Approved Plats on Official Map.—After adoption of the official map, or part thereof, all streets, watercourses and public grounds on final, recorded plats which have been approved as provided by this act shall be deemed amendments to the official map. Notwithstanding any of the other terms of this article, no public hearing need be held or notice given if the amendment of the official map is the result of the addition of a plat which has been approved as provided by this act:

Section 404. Effect of Official Map on Mapped Streets, Watercourses and Public Grounds.—The adoption of any street or street lines as part of the official map shall not, in and of itself, constitute or be deemed to constitute the opening or establishment of any street nor the taking or acceptance of any land for street purposes, nor shall it obligate the municipality to improve or maintain any such street. The adoption of proposed watercourses or public grounds as part of the official map shall not, in and of itself, constitute or be deemed to constitute a taking or acceptance of any land by the municipality.

Section 405. Buildings in Mapped Streets, Watercourses, and Public Grounds.—For the purpose of preserving the integrity of the official map of the municipality, no permit shall be issued for any building within the lines of any street, watercourse or public ground shown or laid out on the official map. No person shall recover any damages for the taking for public use of any building or improvements constructed within the lines of any street, watercourse or public ground after the same shall have been included in the official map, and any such building or improvement shall be removed at the expense of the owner. However, when the property of which the reserved location forms a part, cannot yield a reasonable return to the owner unless a permit shall be granted, the owner may apply to the governing body for the grant of a permit to so build. Before granting any permit authorized in this section, the governing body shall give public notice and hold a public hearing at which all parties in interest shall have an opportunity to be heard. A refusal by the governing body to grant the permit applied for may be appealed by the applicant to court in the same manner, and within the same time limitation, as is provided for zoning appeals by this act.

Section 406. Time Limitations on Reservations for Future Taking.—The governing body may fix the time for which streets, watercourses and public grounds on the official map shall be deemed reserved for future taking or acquisition for public use. However, the reservation for public grounds shall lapse and become void one year after an owner of such property has submitted a written notice to the governing body announcing his intentions to build, subdivide or otherwise develop the land covered by the reservation, or has made formal application for an official permit to build a structure for private use, unless the governing body shall have acquired the property, or begun condemnation proceedings to acquire such property before the end of the year.

Section 407. Release of Damage Claims or Compensation.—The governing body may designate any of its agencies to negotiate with

the owner of land whereon reservations are made, releases of claims for damages or compensation for such reservations, or agreements, indemnifying the governing body from such claims by others, which releases or agreements when properly executed by the governing body and the [1] owner and recorded shall be binding upon the successor in title.

Section 408. Notice to Other Municipalities.—When any county has adopted an official map in accordance with the terms of this article, a certified copy of the map and the ordinances adopting it shall be sent to every city, borough, incorporated town and township within said county. All amendments shall be sent to the aforementioned municipalities. The powers of the governing bodies of counties to adopt, amend and repeal official maps shall be limited to land and watercourses in those cities, boroughs, incorporated towns and townships wholly or partly within the county which have no official map in effect at the time an official map is introduced before the governing body of the county, and until the city, borough, incorporated town or township official map is in effect. The adoption of an official map by any municipality, other than a county, whose land or watercourses are subject to county official mapping, shall act as a repeal protanto of the county [2] official map within the municipality adopting such ordinance. Notwithstanding any of the other terms or conditions of this section the county official map shall govern as to county streets and public grounds even though such streets or public grounds are located in a municipality which has adopted an official map. When a city, borough, incorporated town or township within a county which has adopted an official map also adopts such an official map [3] a certified copy of the map, the ordinance adopting it and any later amendments shall be forwarded to the county planning agency, or if no such agency exists to the governing body of the county. Additionally, if any municipality adopts an official map, or amendment thereto, that shows any street intended to lead into any adjacent municipality a certified copy of said official map or amendment shall be forwarded to such adjacent municipality.

ARTICLE V

Subdivision and Land Development

Section 501. Grant of Power.—The governing body of each municipality may regulate subdivisions and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance may require that all plats of land lying within the municipality shall be submitted for approval to the governing body or in lieu thereof to a planning agency designated in the ordinance for this purpose. All powers granted herein to the governing body or the planning agency shall be exercised in accordance with the provisions of the subdivision and land development ordinance. In the case of any development governed by an ordinance adopted pursuant to Article VII,

[1] "owners" in original
[2] "officials may" in original
[3] at in original

however, the applicable provisions of the [1] subdivision and land development ordinance shall be as modified by such ordinance and the procedures which shall be followed in the approval of any plat and the rights and duties of the parties thereto shall be governed by Article VII and the provisions of the ordinance adopted thereunder.

Section 502. Jurisdiction of County Planning Agencies.—When any county has adopted a subdivision and land development ordinance in accordance with the terms of this article, a certified copy of the ordinance shall be sent to every city, borough, incorporated town or township within the county. All amendments shall also be sent to the aforementioned municipalities. The powers of governing bodies of counties to enact, amend and repeal subdivision and land development ordinances shall be limited to land in those cities, boroughs, incorporated towns and townships wholly or partly within the county which have no [1] subdivision and land development ordinance in effect at the time a subdivision and land development ordinance is introduced before the governing body of the county, and until the city, borough, incorporated town or township subdivision and land development ordinance is in effect and a certified copy of such ordinance is filed with the county planning agency, if one exists. The enactment of a subdivision and land development ordinance by any municipality, other than a county, whose land is subject to a county subdivision and land development ordinance shall act as a repeal protanto of the county subdivision and land development ordinance within the municipality adopting such ordinance. However, applications for subdivision and land development located within a city, borough, incorporated town or township having adopted a subdivision and land development ordinance as set forth in this article shall be forwarded upon receipt by the municipality to the county planning agency for review and report at county expense: Provided, That such municipalities shall not approve such applications until the county report is received or until the expiration of thirty days from the date the application was forwarded to the county.

Section 503. Contents of Subdivision and Land Development Ordinance.—The subdivision and land development ordinance may include, but need not be limited to:

(1) Provisions for the submittal and processing of plats, and specifications for such plats, including provisions for preliminary and final approval and for processing of final approval by stages or [2] sections of development.

(2) Provisions for insuring that: (i) the layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof; (ii) streets in and bordering a subdivision or land development shall be coordinated, and be of such widths and grades and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection; (iii) adequate easements or rights-of-way shall be provided

[1] "subdivisions" in original
[2] section in original

for drainage and utilities; (iv) reservations if any by the developer of any area designed for use as public grounds shall be suitable size and location for their designated uses; (v) and land which is subject to flooding, subsidence or underground fires either shall be made safe for the purpose for which such land is proposed to be used, or that such land shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.

(3) Provisions governing the standards by which streets shall be graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plats.

(4) Provisions which take into account land development not intended for the immediate erection of buildings where streets, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements may not be possible to install as a condition precedent to final approval of plats, but will be a condition precedent to the erection of buildings on lands included in the approved plat.

(5) Provisions for encouraging and promoting flexibility [1] economy and ingenuity in the layout and design of subdivisions and land developments including provisions authorizing the planning agency to alter site requirements and for encouraging other practices which are in accordance with modern and evolving principles of site planning and development.

Section 504. Enactment of Subdivision and Land Development Ordinance.—Before voting on the enactment of a proposed subdivision and land development ordinance, the governing body shall hold a public hearing thereon pursuant to public notice. A brief summary setting forth the principal provisions of the proposed ordinance and a reference to the place within the municipality where copies of the proposed ordinance may be secured or examined shall be incorporated in the public notice. Unless the proposed subdivision and land development ordinance shall have been prepared by the planning agency, the governing body shall submit the ordinance to the planning agency at least forty days prior to the hearing on such ordinance to provide the planning agency an opportunity to submit recommendations.

Section 505. Enactment of Subdivision and Land Development Ordinance Amendment.—Amendments to the subdivision and land development ordinance shall become effective only after a public hearing held pursuant to public notice in the manner prescribed for enactment of a proposed ordinance by this article. In addition, in case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency for recommendations at least thirty days prior to the date fixed for the public hearing on such proposed amendment.

Section 506. Publication After Enactment.—After enactment, if the advertisement of a subdivision and land development ordinance or amendment is required by other laws respecting the advertisement of ordinances, such advertisements may consist solely of a reference to

[1] "economy" not in original

the place or places within the municipality where copies of such ordinance or amendment shall be obtainable for a charge not greater than the cost thereof and available for examination without charge. Subdivision and land development ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 507. Effect of Subdivision and Land Development Ordinance.—Where a subdivision and land development ordinance has been enacted by a municipality under the authority of this article no subdivision or land development of any lot, tract or parcel of land shall be made, no street, sanitary sewer, storm sewer, water main or other improvements in connection therewith shall be laid out, constructed, opened or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with the provisions of such ordinance.

Section 508. Approval of Plats.—All applications for approval of a plat (other than those governed by Article VII), whether preliminary or final, shall be acted upon by the governing body within such time limits as may be fixed in the subdivision and land development ordinance but the governing body shall render its decision and communicate it to the applicant not later than forty days after such application is filed.

(1) The decision of the governing body shall be in writing and shall be communicated to the applicant personally or mailed to him at his last known address not later than five days following the decision;

(2) When the application is not approved in terms as filed the decision shall specify the defects found in the application and describe the requirements which have not been met and shall, in each case, cite to the provisions of the statute or ordinance relied upon;

(3) Failure of the governing body or agency to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the application in terms as presented unless the applicant has agreed in writing to an extension of time or change in the prescribed manner of presentation of communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect;

(4) From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in the [1] subdivision and land development ordinance, and while such application is pending approval or disapproval, no change or amendment of the zoning, subdivision or other governing ordinance or plan shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. In addition, when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the

[1] subsection in original

terms of the approved preliminary application as hereinafter provided. However, if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in governing regulations. When an application for approval of a plat, whether preliminary or final, has been approved or approved subject to conditions acceptable to the applicant, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within three years from such approval. Where final approval is preceded by preliminary approval, the three-year period shall be counted from the date of the preliminary approval. In the case of any doubt as to the terms of a preliminary approval, the terms shall be construed in the light of the provisions of the governing ordinances or plans as they stood at the time when the application for such approval was duly filed.

(5) If a public hearing has been held upon a preliminary plat or plan, a public hearing shall not be required upon the final plat unless the final plat departs substantially from the preliminary plat or plan.

Section 509. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plat Approval.—No plat shall be finally approved unless the streets shown on such plat have been improved as may be required by the subdivision and land development ordinance and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and other improvements as may be required by the subdivision and land development ordinance have been installed in accordance with such ordinance. In lieu of the completion of any improvements required as a condition for the final approval of a plat, the subdivision and land development ordinance may provide for the deposit with the municipality of a corporate bond, or other security acceptable to the governing body in an amount sufficient to cover the costs of any improvements which may be required. Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required within the period fixed in the subdivision and land development ordinance for such completion. In the case where development is projected over a period of years, the governing body or the planning agency may authorize submission of final plats by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.

Section 510. Release from Improvement Bond.—(a) When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the municipal governing body, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the municipal engineer. The municipal governing body shall, within ten days after receipt of such notice, direct and authorize the municipal engineer to inspect

all of the aforesaid improvements. The municipal engineer shall, thereupon, file a report, in writing, with the municipal governing body, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within thirty days after receipt by the municipal engineer of the aforesaid authorization from the governing body; said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the municipal engineer, said report shall contain a statement of reasons for such nonapproval or rejection.

(b) The municipal governing body shall notify the developer, in writing by certified or registered mail of the action of said municipal governing body with relation thereto.

(c) If the municipal governing body or the municipal engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond.

(d) If any portion of the said improvements shall not be approved or shall be rejected by the municipal governing body, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

(e) Nothing herein, however, shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise, any determination of the municipal governing body or the municipal engineer.

(f) Where herein reference is made to the municipal engineer, he shall be a duly registered professional engineer employed by the municipality or engaged as a consultant thereto.

Section 511. Remedies to Effect Completion of Improvements.—In the event that any improvements which may be required have not been installed as provided in the subdivision and land development ordinance or in accord with the approved final plat the governing body of the municipality is hereby granted the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond, or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the governing body of the municipality may, at its option, install part of such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

Section 512. Appeals to Court from Subdivision and Land Development Decisions.—The decisions of the governing body or the planning

agency with respect to the approval or disapproval of plats may be appealed directly to court in the same manner and within the same time limitations, as is provided for zoning appeals from the decisions or findings of the zoning hearing board by this act.

Section 513. Recording Plat.—(a) Upon the approval of a final plat, the developer shall within ninety days of such final approval record such plat in the office of the recorder of deeds of the county in which the municipality is located. Whenever plat approval is required by a municipality, the recorder of deeds of the county shall not accept any plat for recording unless such plat officially notes the approval of the governing body.

(b) The recording of the plat shall not constitute grounds for assessment increases until such time as lots are sold or improvements are installed on the land included within the subject plat.

Section 514. Effect of Plat Approval on Official Map.—After a plat has been approved and recorded as provided in this article, all streets and public grounds on such plat shall be, and become a part of the official map of the municipality without public hearing.

Section 515. Penalties.—Any person, partnership, or corporation who or which being the owner or agent of the owner of any lot, tract or parcel of land shall lay out, construct, open or dedicate any street, sanitary sewer, storm sewer, water main or other improvements for public use, travel or other purposes or for the common use of occupants of buildings abutting thereon, or who sells, transfers or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of such subdivision or land development or otherwise, or erect any building thereon, unless and until a final plat has been prepared in full compliance with the provisions of this act and of the regulations adopted hereunder and has been recorded as provided herein, shall be guilty of a misdemeanor, and upon conviction thereof, such person, or the members of such partnership, or the officers of such corporation, or the agent of any of them, responsible for such violation pay a fine not exceeding one hundred dollars ($100) per lot or parcel or per dwelling within each lot or parcel. All fines collected for such violations shall be paid over to the municipality whose ordinance has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.

Section 516. Saving Clause.—The passage of this act and the repeal by it of prior enabling laws relating to subdivision control shall not invalidate any subdivision ordinances, resolutions or regulations enacted under such prior laws. This act, in such respect, shall be deemed a continuation and codification of such prior enabling laws.

ARTICLE VI

Zoning

Section 601. General Powers.—The governing body of each municipality, in accordance with the conditions and procedures set forth in this

act, may enact, amend and repeal zoning ordinances to implement comprehensive plans and to accomplish any the of the purposes of this act.

Section 602. County Powers.—The powers of the governing bodies of counties to enact, amend and repeal zoning ordinances shall be limited to land in those cities, boroughs, incorporated towns and townships, wholly or partly within the couty, which have no zoning ordinance in effect at the time a zoning ordinance is introduced before the governing body of the county and until the city, borough, incorporated town or township zoning ordinance is in effect. The enactment of a zoning ordinance by any municipality, other than the county, whose land is subject to county zoning shall act as a repeal protanto of the county zoning ordinance within the municipality adopting such ordinance.

Section 603. Ordinance Provisions.—Zoning ordinances may permit, prohibit, regulate, restrict and determine:

(1) Uses of land, watercourses and other bodies of water;

(2) Size, height, bulk, location, erection, construction, repair, maintenance, alteration, razing, removal and use of structures;

(3) Areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;

(4) Density of population and intensity of use.

In addition, zoning ordinances may contain:

(1) Provisions for special exceptions and variances administered by the zoning hearing board, which provisions shall be in accordance with this act;

(2) Provisions for conditional uses to be allowed or denied by the governing body after recommendations by the planning agency, pursuant to express standards and criteria set forth in the ordinances;

(3) Provisions for the administration and enforcement of such ordinances; and

(4) Such other provisions as may be necessary to implement the purposes of this act.

Section 604. Zoning Purposes.—The provisions of zoning ordinances shall be designed:

(1) To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, disaster evacuation, airports, and national defense facilities, the provisions of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements, as well as

(2) To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers. Zoning ordinances shall be made in accordance with an overall program, and with consideration for the character of the municipality, its various parts and the suitability of the various parts for particular uses and structures.

Section 605. Classifications.—In any municipality, other than a county, which enacts a zoning ordinance, no part of such municipality shall be left unzoned. The provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures and to such various districts of the municipality as shall be described by a map made part of the zoning ordinance. Where zoning districts are created, all provisions shall be uniform for each class of uses or structures, within each district, except that additional classifications may be made within any district:

(1) For the purpose of making transitional provisions at and near the boundaries of districts, and

(2) For the regulation, restriction or prohibition of uses and structures at or near (i) major thoroughfares, their intersections and interchanges, and transportation arteries, (ii) natural or artificial bodies of water, (iii) places of relatively steep slope or grade, (iv) public buildings and public grounds, (v) aircraft, helicopter, rocket, and spacecraft facilities, (vi) places having unique historical or patriotic interest or value, (vii) flood plain areas and other places having a special character or use affecting and affected by their surroundings. As among several classes of zoning districts, the provisions for permitted uses may be mutually exclusive, in whole or in part.

Section 606. Statement of Community Development Objections.—Each zoning ordinance enacted after the effective date of this act shall contain a statement of community development objectives. This statement may be supplied by reference to the community comprehensive plan or such portions of the community comprehensive plan as may exist and be applicable or to a statement of legislative findings of the governing body of the political subdivision, having a bearing on the community comprehensive plan, with respect to land use, density of population, and location and function of streets and other community facilities and utilities, together with any other factors that the municipality believes relevant in describing the purposes and intent of such ordinance. With respect to zoning ordinances enacted prior to the effective date of this act, a statement of community development objectives shall be supplied by amendment to the zoning ordinance within three years from the effective date of this act.

Section 607. Preparation of Proposed Zoning Ordinance.—The planning agency of each municipality shall prepare the text and map of the proposed zoning ordinance as well as make all necessary studies and surveys preliminary thereto, whenever instructed to do so by the governing body. In preparing a proposed zoning ordinance, the planning agency shall hold at least one public hearing pursuant to public notice and may hold additional public hearings upon such notice as it shall determine to be advisable. Upon the completion of its work, the planning agency shall present to the governing body the proposed zoning ordinance, together with recommendations and explanatory materials. The procedure

set forth in this section shall be a condition precedent to the validity [1] of a zoning ordinance adopted pursuant to this act. If a county planning agency shall have been created for the county in which the city, borough, incorporated town or township adopting the ordinance is located, then at least thirty days prior to the submission of the ordinance to the local governing body, the city, borough, incorporated town or township planning agency shall submit the proposed ordinance to said county planning agency for recommendations.

Section 608. Enactment of Zoning Ordinance Amendments.—Before voting on the enactment of a zoning ordinance, the governing body shall hold a public hearing thereon, pursuant to public notice.

Section 609. Enactment of Zoning Ordinance Amendments.—For the preparation of amendments to zoning ordinances, the procedure set forth in this article for the preparation of a proposed zoning ordinance shall be permissive. Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, pursuant to public notice. In the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least thirty days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.

Section 610. Content of Public Notice.—Public notices of proposed zoning ordinances and amendments shall include either the full text thereof, or a brief summary setting forth the principal provisions in reasonable detail, and a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined, in addition to the time and place of hearing.

Section 611. Publication After Enactment.—After enactment, if the advertisement of a zoning ordinance or amendment is required by other laws respecting the advertisement of ordinances, such advertisement may consist solely of a reference [2] to the place or places within the municipality where copies of such ordinance or amendment shall be obtainable for a charge not greater than the cost thereof and available for examination without charge. Zoning ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

Section 612. Nonconforming Uses and Structures Classified.—For the purposes of this act:

(1) "Nonconforming use" means a use, whether of land or of a structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where

[1] "or" in original
[2] "to" not in original

such use was lawfully, in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation:

(2) "Nonconforming structure" means a structure or part of a structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

Section 613. Registration of Nonconforming Uses.—Zoning ordinances may contain provisions providing for and requiring the identification and registration of nonconforming uses and nonconforming structures.

Section 614. Appointment and Powers of Zoning Officer.—For the administration of a zoning ordinance, a zoning officer, who may hold other office in the municipality, shall be appointed. The zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance.

Section 615. Zoning Appeals.—All appeals from decisions of the zoning officer shall be taken in the manner set forth in this act.

Section 616. Enforcement Penalties.—Any person, partnership or corporation who or which shall violate the provisions of any zoning ordinance enacted under this act or prior enabling laws shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than five hundred dollars ($500). In default of payment of the fine, such person, the members of such partnership, or the officers of such corporation shall be liable to imprisonment for not more than sixty days. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of zoning ordinances shall be paid over to the municipality whose ordinance has been violated.

Section 617. Enforcement Remedies.—In case any building, structure, or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of any ordinance enacted under this act or prior enabling laws, the governing body or, with the approval of the governing body, an officer of the municipality, in addition to other remedies, may institute in the name of the municipality any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure or land, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

Section 618. Finances.—The governing body may appropriate from general funds moneys to finance the preparation, administration and enforcement of zoning ordinances, to finance the work of the zoning hearing board and to support or oppose, upon appeal to the courts, decisions of the zoning hearing board. For the same purposes, the govern-

ing body may accept gifts and grants of money and services from private sources and from the county, State and Federal governments. The governing body may prescribe reasonable fees to be charged with respect to the administration of a zoning ordinance.

Section 619. Exemptions.—This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

Section 620. Saving Clause.—The passage of this act and the repeal by it of prior enabling laws relating to zoning ordinances shall not invalidate any zoning ordinance enacted under such prior enabling laws. This act shall, in such respect, be deemed a continuation and codification of such prior enabling laws.

ARTICLE VII

Planned Residential Development

Section 701. Purposes.—In order that the purposes of this act be furthered in an era of increasing urbanization and of growing demand for housing of all types and design; to insure that the provisions of Article VI which are concerned in part with the uniform treatment of dwelling type, bulk, density and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of that Article VI; to encourage innovations in residential development and renewal so that the growing demand for housing may be met by greater variety in type, design and layout of dwellings and by the conservation and more efficient use of open space ancillary to said dwellings; so that greater opportunities for better housing and recreation may extend to all citizens and residents of this State; and in order to encourage a more efficient use of land and of public services and to reflect changes in the technology of land development so that economies secured may enure to the benefit of those who need homes; and, in aid of these purposes, to provide a procedure which can relate the type, design and layout of residential development to the particular site and the particular demand for housing existing at the time of development in a manner consistent with the preservation of the property values within existing residential areas, and to insure that the increased flexibility of regulations over land development authorized herein is carried out under such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay, the following powers are granted to all municipalities.

Section 702. Grant of Power.—The governing body of each municipality may enact, amend and repeal ordinances fixing standards and conditions for planned residential development. The enactment of such ordinances shall be in accordance with the procedures required for the enactment of an amendment of a zoning ordinance as provided in Article VI of this act. Pursuant to such ordinances the governing body may ap-

prove, modify or disapprove any development plan within the municipality adopting such ordinances or designate the planning agency, or any other committee, commission or office as its official agency for such purposes. Such ordinances shall:

(1) Specify the body, agency or office within the municipality which shall administer planned residential development ordinances pursuant to the provisions of this article;

(2) Set forth the standards, conditions and regulations for a planned residential development consistent with the provisions of this article; and

(3) Set forth the procedures pertaining to the application for, hearing on and tentative and final approval of a planned residential development, which shall be consistent with the provisions of this article for such applications and hearings.

Section 703. Application of Comprehensive Plan.—Every ordinance and all amendments thereto adopted pursuant to this article shall be based on and interpreted in relation to the comprehensive plan for the development of the municipality prepared under the provisions of this act. Every application for approval of a planned residential development shall be based on and interpreted in relation to such comprehensive plan.

Section 704. Jurisdiction of County Planning Agencies.—When any county has adopted a planned residential development ordinance in accordance with the terms of this article, a certified copy of the ordinance shall be sent to every city, borough, incorporated town or township within the county. All amendments shall also be sent to the aforementioned municipalities. The powers of governing bodies of counties to enact, amend and repeal planned residential development ordinances shall not supersede any local planned residential development, zoning or subdivision and land development ordinance which is already in effect or subsequently becomes effective in any city, borough, incorporated town or township within such county, provided that a certified copy of each such ordinance is filed with the county planning agency, if one exists. However, all applications for tentative approval of planned residential development of land located within a city, borough, incorporated town or township having adopted a planned residential development ordinance as set forth in this article shall nevertheless be referred to the county planning agency, if one exists, for study and recommendation and such county planning agency shall be required to report to such municipality within thirty days or forfeit the right to review. Further, any city, borough, incorporated town or township may designate the county planning agency as its official agency for review and approval of planned residential development applications.

Section 705. Standards and Conditions for Planned Residential Development.—Every ordinance adopted pursuant to the provisions of this article shall set forth all the standards, conditions and regulations by which a proposed planned residential development shall be evaluated, and said standards, conditions and regulations shall be consistent with the following provisions:

(a) The ordinance adopted pursuant to this article shall set forth the uses permitted in a planned residential development, which uses may include and shall be limited to:

(1) Dwelling units in detached, semi-detached, attached or multi-storied structures, or any combination thereof; and (2) those non-residential uses deemed to be appropriate for incorporation in the design of the planned residential development. The ordinance may establish regulations setting forth the timing of development among the various types of dwellings and may specify whether some or all nonresidential uses are to be built before, after or at the same time as the residential uses.

(b) The ordinance adopted pursuant to this article shall establish standards governing the density, or intensity of land use, in a planned residential development. The standards may vary the density or intensity of land use, otherwise applicable to the land under the provisions of a zoning ordinance of the municipality within the planned residential development in consideration of:

(1) The amount, location and proposed use of common open space;

(2) The location and physical characteristics of the site of the proposed planned residential development; and

(3) The location, design, type and use of structures proposed.

(c) In the case of a planned residential development proposed to be developed over a period of years, standards established in an ordinance adopted pursuant to this article may, to encourage the flexibility of housing density, design and type intended by this article, permit a variation in each section to be developed from the density, or intensity of use, established for the entire planned residential development. The ordinance may include provisions to allow for a greater concentration of density, of intensity of land use, within some section or sections of development, whether it be earlier or later in the development than upon others. The ordinance may require that the approval of such greater concentration of density of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the municipality, provided that such reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed, so that flexibility of development which is a prime objective of this article, can be maintained.

(d) The standards for a planned residential development established by an ordinance adopted pursuant to this article may require that the common open space resulting from the application of standards for density, or intensity of land use, shall be set aside for the use and benefit of the residents in such development and may include provisions which shall determine the amount and location of said common open space and secure its improvement and maintenance for common open space use, subject, however, to the following:

(1) The municipality may, at any time and from time to time, accept

the dedication of land or any interest therein for public use and maintenance, but the municipality need not require, as a condition of the approval of a planned residential development, that land proposed to be set aside for common open space be dedicated or made available to public use. The ordinance may require that the landowner provide for and establish an organization for the ownership and maintenance of the common open space, and that such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), without first offering to dedicate the same to the public.

(2) In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after establishment of the planned residential development fail to maintain the common open space in reasonable order and condition in accordance with the development plan, the municipality may serve written notice upon such organization or upon the residents of the planned residential development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be corrected within thirty days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen days of the notice. At such hearing the municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected. If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said thirty days or any extension thereof, the municipality, in order to preserve the taxable values of the properties within the planned residential development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said maintenance by the municipality shall not constitute a taking of said common open space, nor vest in the public any rights to use the same. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the planned residential development, to be held by the governing body or its designated agency, at which hearing such organization or the residents of the planned residential development shall show cause why such maintenance by the municipality shall not, at the option of the municipality, continue for a succeeding year. If the governing body, or its designated agency, shall determine that such organization is ready and able to maintain said common open space in reasonable condition, the municipality shall cease to maintain said common open space at the end of said year. If the governing body or its designated agency shall determine that such organization is not ready and able to maintain said common open space in a reasonable condition, the municipality may, in its

discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The decision of the governing body or its designated agency shall be subject to appeal to court in the same manner, and within the same time limitation, as is provided for zoning appeals by this act.

(3) The cost of such maintenance by the municipality shall be assessed ratably against the properties within the planned residential development that have a right of enjoyment of the common open space, and shall become a lien on said properties. The municipality at the time of entering upon said common open space for the purpose of maintenance shall file a notice of lien in the office of the prothonotary of the county, upon the properties affected by the lien within the planned residential development.

(e) An ordinance adopted pursuant to the provisions of this article may require that a planned residential development contain a minimum number of dwelling units.

(f) The authority granted a municipality by Article V to establish standards for the location, width, course and surfacing of streets, walkways, curbs, gutters, street lights, shade trees, water, sewage and drainage facilities, easements or rights-of-way for drainage and utilities, reservations of public grounds and other improvements, shall be vested in the governing body or its designated agency for the purposes of this article. The standards applicable to a particular planned residential development may be different than or modifications of, the standards and requirements otherwise required of subdivisions authorized under an ordinance adopted pursuant to Article V, provided, however, that an ordinance adopted pursuant to this article shall set forth the limits and extent of any modifications or changes in such standards and requirements in order that a landowner shall know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions.

(g) An ordinance adopted pursuant to this article shall set forth the standards and criteria by which the design, bulk and location of buildings shall be evaluated, and all such standards and criteria for any feature of a planned residential development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for a planned residential development can be evaluated. All standards in such ordinance shall not unreasonably restrict the ability of the landowner to relate his development plan to the particular site and to the particular demand for housing existing at the time of development.

Section 706. Enforcement and Modification of Provisions of the Plan.—To further the mutual interest of the residents of the planned residential development and of the public in the preservation of the integrity of the development plan, as finally approved, and to insure that modifications, if any, in the development plan shall not impair the reasonable reliance of the said residents upon the provisions of the

development plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the development plan as finally improved, whether those are recorded by plat, covenant, easement or otherwise shall be subject to the following provisions:

(1) The provisions of the development plan relating to (i) the use, bulk and location of buildings and structures, (ii) the quantity and location of common open space, except as otherwise provided in this article, and (iii) the intensity of use or the density of residential units, shall run in favor of the municipality and shall be enforceable in law or in equity by the municipality, without limitation on any powers of regulation otherwise granted the municipality by law.

(2) All provisions of the development plan shall run in favor of the residents of the planned residential development but only to the extent expressly provided in the development plan and in accordance with the terms of the development plan, and to that extent said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or equity by said residents acting individually, jointly, or through an organization designated in the development plan to act on their behalf; provided, however, that no provisions of the development plan shall be implied to exist in favor of residents of the planned residential development except as to those portions of the development plan which have been finally approved and have been recorded.

(3) All those provisions of the development plan authorized to be enforced by the municipality under this section may be modified, removed, or released by the municipality, except grants or easements relating to the service or equipment of a public utility, subject to the following conditions: (i) no such modification, removal or release of the provisions of the development plan by the municipality shall affect the rights of the residents of the planned residential development to maintain and enforce those provisions, at law or equity, as provided in this section; (ii) no modification, removal or release of the provisions of the development plan by the municipality shall be permitted except upon a finding by the governing body or its designated agency, following a public hearing thereon pursuant to public notice called and held in accordance with the provisions of this article, that the same is consistent with the efficient development and preservation of the entire planned residential development, does not adversely affect either the enjoyment of land abutting upon or across the street from the planned residential development or the public interest, and is not granted solely to confer a special benefit upon any person.

(4) Residents of the planned residential development may, to the extent and in the manner expressly authorized by the provisions of the development plan, modify, remove or release their rights to enforce the provisions of the development plan but no such action shall affect the right of the municipality to enforce the provisions of the development plan in accordance with the provisions of this section.

Section 707. Application for Tentative Approval of Planned Resi-

dential Development.—In order to provide an expeditious method for processing a development plan for a planned residential development under the terms of an ordinance adopted pursuant to the powers granted herein, and to avoid the delay and uncertainty which would arise if it were necessary to secure approval, by a multiplicity of local procedures, of a plat of subdivision as well as approval of a change in the zoning regulations otherwise applicable to the property, it is hereby declared to be in the public interest that all procedures with respect to the approval or disapproval of a development plan for a planned residential development and the continuing administration thereof shall be consistent with the following provisions:

(1) An application for tentative approval of the development plan for a planned residential development shall be filed by or on behalf of the landowner;

(2) The application for tentative approval shall be filed by the landowner in such form, upon the payment of such a reasonable fee and with such officials of the municipality as shall be designated in the ordinance adopted pursuant to this article;

(3) All planning, zoning and subdivision matters relating to the platting, use and development of the planned residential development and subsequent modifications of the regulations relating thereto, to the extent such modification is vested in the municipality, shall be determined and established by the governing body or its designated agency;

(4) The ordinance shall require only such information in the application as is reasonably necessary to disclose to the governing body or its designated agency: (i) the location, size and topography of the site and the nature of the landowner's interest in the land proposed to be developed; (ii) the density of land use to be allocated to parts of the site to be developed; (iii) the location and size of the common open space and the form of organization proposed to own and maintain the common open space; (iv) the use and the approximate height, bulk and location of buildings and other structures; (v) the feasibility of proposals for the disposition of sanitary waste and storm water; (vi) the substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures including proposed easements or grants for public utilities; (vii) the provisions for parking of vehicles and the location and width of proposed streets and public ways; (viii) the required modifications in the municipal land use regulations otherwise applicable to the subject property; and (ix) in the case of development plans which call for development over a period of years, a schedule showing the proposed times within which applications for final approval of all sections of the planned residential development are intended to be filed and this schedule must be updated annually, on the anniversary of its approval, until the development is completed and accepted;

(5) The application for tentative approval of a planned residential development shall include a written statement by the landowner setting forth the reasons why, in his opinion, a planned residential development

would be in the public interest and would be consistent with the comprehensive plan for the development of the municipality; and

(6) The application for and tentative and final approval of a development plan for a planned residential development prescribed in this article shall be in lieu of all other procedures or approvals, otherwise required pursuant to Articles V and VI of this act.

Section 708. Public Hearings.—(a) Within sixty days after the filing of an application for tentative approval of a planned residential development pursuant to this article, a public hearing pursuant to public notice on said application shall be held by the governing body in the manner prescribed in Article VI for the enactment of an amendment to a zoning ordinance. The chairman, or, in his absence, the acting chairman, of the governing body or its designated agency may administer oaths and compel the attendance of witnesses. All testimony by witnesses at any hearing shall be given under oath and every party of record at a hearing shall have the right to cross-examine adverse witnesses.

(b) A verbatim record of the hearing shall be caused to be made by the governing body whenever such records are requested by any party to the proceedings; but the cost of making and transcribing such a record shall be borne by the party requesting it and the expense of copies of such record shall be borne by those who wish to obtain such copies. All exhibits accepted in evidence shall be identified and duly preserved or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record.

(c) The governing body may continue the hearing from time to time, and may refer the matter back to the planning agency for a report, provided, however, that in any event, the public hearing or hearings shall be concluded within sixty days after the date of the first public hearing.

Section 709. The Findings.—(a) The governing body, within thirty days following the conclusion of the public hearing provided for in this article, shall, by official written communication, to the landowner, either:

(1) Grant tentative approval of the development plan as submitted;

(2) Grant tentative approval subject to specified conditions not included in the development plan as submitted; or

(3) Deny tentative approval to the development plan.

Failure to so act within said period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that tentative approval is granted subject to conditions, the landowner may, within thirty days after receiving a copy of the official written communication of the governing body notify such governing body of his refusal to accept all said conditions, in which case, the governing body shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not, within said period, notify the governing body of his refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

(b) The grant or denial of tentative approval by official written communication shall include not only conclusions but also findings of fact

related to the specific proposal and shall set forth the reasons for the grant, with or without conditions, or for the denial, and said communication shall set forth with particularity in what respects the development plan would or would not be in the public interest including but not limited to findings of fact and conclusions on the following:

(1) In those respects in which the development plan is or is not consistent with the comprehensive plan for the development of the municipality;

(2) The extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;

(3) The purpose, location and amount of the common open space in the planned residential development, the reliability of the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development;

(4) The physical design of the development plan and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment;

(5) The relationship, beneficial or adverse, of the proposed planned residential development to the neighborhood in which it is proposed to be established; and

(6) In the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the planned residential development in the integrity of the development plan.

(c) In the event a development plan is granted tentative approval, with or without conditions, the governing body may set forth in the official written communication the time within which an application for final approval of the development plan shall be filed or, in the case of a development plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and [1] an application for final approval shall not be less than three months and, in the case of developments over a period of years, the time between applications for final approval of each part of a plan shall be not less than twelve months.

Section 710. Status of Plan After Tentative Approval.—(a) The official written communication provided for in this article shall be certified by the secretary or clerk of the governing body and shall be filed in his office, and a certified copy shall be mailed to the landowner. Where tentative approval has been granted, the same shall be noted on the zoning map.

[1] "on" in original

(b) Tentative approval of a development plan shall not qualify a plat of the planned residential development for recording nor authorize development or the issuance of any building permits. A development plan which has been [1] given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of the municipality pending an application or applications for final approval, without the consent of the landowner, provided an application for final approval is filed or, in the case of development over a period of years, provided applications are filed, within the periods of time specified in the official written communication granting tentative approval.

(c) In the event that a development plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said development plan and shall so notify the governing body in writing, or in the event the landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the development plan for which final approval has not been given shall be subject to those local ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the zoning map and in the records of the secretary or clerk of the municipality.

Section 711. Application for Final Approval.—(a) An application for final approval may be for all the land included in a development plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the official of the municipality designated by the ordinance and within the time or times specified by the official written communication granting tentative approval. The application shall include any drawings, specifications, covenants, easements, performance bond and such other requirements as may be specified by ordinance, as well as any conditions set forth in the official written communication at the time of tentative approval. A public hearing on an application for final approval of the development plan, or part thereof, shall not be required provided the development plan, or the part thereof, submitted for final approval, is in compliance with the development plan theretofore given tentative approval and with any specified conditions attached thereto.

(b) In the event the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the ordinance and the official written communication of tentative approval, the municipality shall, within thirty days of such filing, grant such development plan final approval.

(c) In the event the development plan as submitted contains variations from the development plan given tentative approval, the governing body

[1] given not in original

may refuse to grant final approval and shall, within thirty days from the filing of the application for final approval, so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the public interest. In the event of such refusal, the landowner may either:

(1) Refile his application for final approval without the variations objected, or

(2) File a written request with the governing body that it hold a public hearing on his application for final approval. If the landowner wishes to take either such alternate action he may do so at any time within which he shall be entitled to apply for final approval, or within thirty additional days if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the development plan. Any such public hearing shall be held pursuant to public notice within thirty days after request for the hearing is made by the landowner, and the hearing shall be conducted in the manner prescribed in this article for public hearings on applications for tentative approval. Within thirty days after the conclusion of the hearing, the governing body shall by official written communication either grant final approval to the development plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this section, be in the form and contain the findings required for an application for tentative approval set forth in this article.

(d) A development plan, or any part thereof, which has been given final approval shall be so certified without delay by the governing body and shall be filed of record forthwith in the office of the recorder of deeds before any development shall take place in accordance therewith. Upon the filing of record of the development plan the zoning and subdivision regulations otherwise applicable to the land included in such plan shall cease to apply thereto. Pending completion within a reasonable time of said planned residential development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said development plan, or part thereof, as finally approved, shall be made except with the consent of the landowner.

(e) In the event that a development plan, or a section thereof, is given final approval and thereafter the landowner shall abandon such plan or the section thereof that has been finally approved, and shall so notify the governing body in writing; or, in the event the landowner shall fail to commence and carry out the planned residential development within such reasonable period of time as may be fixed by ordinance after final approval has been granted, no development or further development shall take place on the property included in the development plan until after the said property is resubdivided and is reclassified by enactment of an amendment to the municipal zoning ordinance in the manner prescribed for such amendments in Article VI.

Section 712. Judicial Review.—Any decision of the governing body under this article granting or denying tentative or final approval of a development plan or shall be subject to appeal to court in the same manner and within the same time limitation, as is provided for zoning appeals by this act.

ARTICLE VIII

Zoning Challenges; General Provisions

Section 801. Landowner.—A landowner desiring to challenge the validity of any provision of a zoning ordinance, subdivision and development ordinance or official map or any amendment thereof shall not be required to make or file any application for development as a condition to pursuing any available judicial or administrative relief, except in the following cases:

(1) When the power to grant relief against the challenged provision is lodged in any administrative agency or officer and the application is necessary to a decision upon the appropriate relief. For purposes of this subsection, the words "administrative agency or officer" shall include the local governing body when acting upon the approval of plats pursuant to Article V and when acting upon the approval of development plans pursuant to Article VII; and

(2) When an application is necessary to define the controversy and to aid in its proper disposition. An application for subdivision approval or for a building permit is not necessary to define the controversy or to aid in its proper disposition within the meaning of this subsection when the challenge is addressed solely to a minimum lot size or maximum density requirement. Nor shall an application relating to buildings be required when the challenge is confined to site planning or subdivision improvement matters, nor shall a subdivision application be required when the challenge is confined to building or land use matters.

Section 802. Landowner; Scope of Judicial Relief.—Notwithstanding any provision contained in section 801 of this act, a landowner desiring to challenge the validity of any provision of a zoning ordinance, subdivision and development ordinance or official map or any amendment thereof, may elect to file a complete application for development, either preliminary or final, with the appropriate agency or officer and demand that such agency or officer decide in what respects the application accords with the provisions of the governing ordinance or map and in what respects it conflicts therewith:

(1) The determination pursuant to such demand shall be made in accordance with the procedures and within the time prescribed by this act for acting upon the application in question. But where the procedures otherwise applicable do not require this, a decision pursuant to a demand made under this section shall be in writing and shall note the matters deemed to be in conflict with the applicable ordinance or map and cite to the provisions of such ordinance or map relied upon. A copy of the decision shall be furnished the applicant personally or mailed to him not later than the day after the decision is rendered.

(2) Upon receipt of the decision, the landowner may immediately pur-

sue the administrative and judicial proceedings available to challenge the provisions found to be in conflict with his application. In addition, he may elect to serve a copy of the decision upon the governing body together with copies of his application and notice of his intention to secure the special relief authorized by this section and clause (2) of section 1009. If the landowner elects to serve such notice, the governing body shall have sixty days from the receipt thereof within which it may amend the challenged provisions of the ordinance or map. If no amendment is adopted within the sixty day period, the court rendering the decision upon the challenge shall disregard any subsequent amendment and may, if it holds the challenged provisions invalid, enter judgment ordering the appropriate agency or officer to approve the landowner's application as filed. If an amendment is adopted within the sixty day period, the landowner may accept the amendment and dismiss his action without prejudice to his right to raise the same issues in another action; or he may amend his complaint and challenge the amended provisions and if such amended provisions are held invalid by the court, the court shall have power to enter judgment ordering the appropriate agency or officer to approve the landowner's application as filed.

(3) When the landowner is unaware of the conflict between his application for development and the provisions of the governing ordinances or maps at the time of filing thereof and files a complete application preliminary or final without serving demand for a decision thereon as provided in this section, and thereafter the application is disapproved on the grounds that it conflicts with provisions of the governing ordinance or map, the landowner may elect, at that time, to demand a decision in the terms required by this section whereupon the procedures set forth in this section and the powers granted to the court shall be applicable as if a demand had been served at the time the application was filed.

ARTICLE IX
Zoning Hearing Board

Section 901. Creation of Board.—Every municipality which has enacted or enacts a zoning ordinance pursuant to this act or prior enabling laws, shall create a zoning hearing board. As used in this act, unless the context clearly indicates otherwise, the term "board" shall refer to such zoning hearing board.

Section 902. Existing Boards of Adjustment.—Every board of adjustment or board of appeals in existence when this act becomes effective shall thereupon become a zoning hearing board, be known as such, and it and the terms of its members shall continue under and in accordance with the provisions of this article. Matters pending before any board of adjustment or board of appeals at the time this act becomes effective shall continue and be completed under the former law in effect at the time such board took jurisdiction of them.

Section 903. Membership of Board.—The membership of the board shall consist of three residents of the municipality appointed by the governing body. Their terms of office shall be three years and shall be

so fixed that the term of office of one member shall expire each year. The board shall promptly notify the governing body of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the board shall hold no other office in the municipality, except that no more than one member of the board may also be a member of the planning commission.

Section 904. Joint Zoning Hearing Boards.—Two or more municipalities may, by ordinances enacted in each, create a joint zoning hearing board in lieu of a separate board for each municipality. A joint board shall consist of two members appointed from among the residents of each municipality by its governing body. The term of office of members of joint boards shall be five years, except that of the two members first appointed from each municipality, the term of office of one member shall be three years. When any vacancies occur, the joint board shall promptly notify the governing body which appointed the member whose office has become vacant, and such governing body shall appoint a member for the unexpired portion of the term. Members of the joint board shall hold no other office in the participating municipality, except that no more than one member of the board appointed by any municipality may also be a member of a planning commission of the municipality from which such appointment is made. In all other respects, joint zoning hearing boards shall be governed by provisions of this act not inconsistent with the provisions of this section.

Section 905. Removal of Members.—Any board member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body which appointed the member, taken after the member has received fifteen days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 906. Organization of Board.—The board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board but the board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the board as provided in section 908. The board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the municipality and laws of the Commonwealth. The board shall keep full public records of its business and shall submit a report of its activities to the governing body once a year.

Section 907. Expenditures for Services.—Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the board may receive compensation for the performance of their duties, as may be fixed by the governing body, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the governing body.

Section 908. Hearings.—The board shall conduct hearings and make

decisions in accordance with the following requirements:

(1) Notice shall be given to the public, the applicant, the county planning agency, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for the same. Notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the board. The governing body may establish reasonable fees, based on cost, to be paid by the applicant and by persons requesting any notice not required by ordinance.

(2) The hearings shall be conducted by the board or the board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the board, but the parties may waive decision or findings by the board and accept the decision or findings of the hearing officer as final.

(3) The parties to the hearing shall be any person who is entitled to notice under clause (1) without special request therefore who has made timely appearance of record before the board and any other person permitted to appear by the board.

(4) The chairman or acting chairman of the board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

(5) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and [1] argument and cross-examine adverse witnesses on all relevant issues.

(6) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(7) The board or the hearing officer, as the case may be, shall keep a record of the proceedings, either stenographically or by sound recording, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.

(8) The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings with any party or his representative unless all parties are given an opportunity to be present.

(9) The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five days. Each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to

[1] "argument and" not in original

the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties and the parties shall be entitled to make written representations thereon to the board prior to final decision or entry of findings. Where the board has power to render a decision and the board or the hearing officer, as the case may be, fails to render the same within the period required by this clause, the decision shall be deemed to have been rendered in favor of the applicant.

(10) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the board not later than the last day of the hearing, the board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

Section 909. Board's Functions: Appeals from the Zoning Officer.—The board shall hear and decide appeals where it is alleged by the appellant that the zoning officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of a valid ordinance or map or any valid rule or regulation governing the action of the zoning officer. Nothing contained herein shall be construed to deny to the appellant the right to proceed directly in court, where appropriate, pursuant to Pa. R.C.P., sections 1091 to 1098 relating to mandamus.

Section 910. Board Functions: Challenge to the Validity of any Ordinance or Map.—Except as provided in section 912, relating to variances, the board shall have no power to pass upon the validity of any provision of an ordinance or map adopted by the governing body. Recognizing that challenges to the validity of an ordinance or map may present issues of fact and of interpretation which may lie within the special competence of the board, and to facilitate speedy disposition of such challenges by a court, the board may hear all challenges wherein the validity of the ordinance or map presents any issue of fact or of interpretation, not hitherto properly determined at a hearing before another competent agency or body, and shall take evidence and make a record thereon as provided in section 908. At the conclusion of the hearing, the board shall decide all contested questions of interpretation and shall make findings on all relevant issues of fact which shall become part of the record on appeal to the court.

Section 911. Challenges to the Subdivision and Land Development Ordinance and to the Planned Residential Development Ordinance; Special Rules.—Challenges to the validity of a subdivision and land development ordinance adopted pursuant to Article V or to the validity of a planned residential development ordinance adopted pursuant to Article VII and appeals from any action of the zoning officer thereunder shall be governed by sections 909 and 910. But when the planning agency or governing body has held a hearing upon an application for development

under the subdivision and land development ordinance or the planned residential development ordinance, such hearing shall be deemed in lieu of a hearing by the board provided for under section 910 and appeal from any decision or determination of the agency or governing body (including challenge to the validity of any provision of such ordinance) shall lie directly to court as provided in sections 512, 712 and 1001.

Section 912. Board's Functions: Variances.—The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. Subject to the provisions of section 801, the board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance provided the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size of shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

(3) That such unnecessary hardship has not been created by the appellant;

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Section 913. Board's Functions; Special Exceptions.—Where the governing body in the zoning ordinance, has stated special exceptions to be granted or denied by the board pursuant to express standards and criteria, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Section 914. Parties Appellant Before Board.—Appeals under sec-

tion 909 and proceedings to challenge an ordinance under section 910 may be filed with the board in writing by any officer or agency of the municipality, or any person aggrieved. Requests for a variance under section 912 and for special exception under section 913 may be filed with the board by any landowner or any tenant with the permission of such landowner.

Section 915. Time Limitations.—The time limitations for raising certain issues and filing certain proceedings with the board shall be the following:

(1) No issue of alleged defect in the process of enactment of any ordinance or map or any amendment thereto shall be raised in any proceeding filed with the board later than thirty days from the time such ordinance, map or amendment takes effect unless the person raising such issue alleges and proves that he failed to receive adequate notice of the enactment or amendment. If such person has succeeded to his interest after the enactment of the ordinances, adequate notice to his predecessor in interest shall be deemed adequate notice to him.

(2) No person shall be allowed to file any proceeding with the board later than thirty days after any application for development, preliminary or final, has been approved by an appropriate municipal officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he failed to receive adequate notice of such approval. If such person has succeeded to his interest after such approval, adequate notice to his predecessor in interest shall be deemed adequate notice to him.

Section 916. Stay of Proceedings.—Upon filing of any proceeding referred to in section 914 and during its pendency before the board all land development pursuant to any challenged ordinance, order or approval of the zoning officer or of any agency or body, and all official action thereunder shall be stayed unless the zoning officer or any other appropriate agency or body certifies to the board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the board or by the court having jurisdiction of zoning appeals on petition after notice to the zoning officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the board by persons other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such persons to post bond as a condition to continuing the proceedings before the board. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court.

ARTICLE X

Zoning Appeals to Courts

Section 1001. Zoning Appeals.—Zoning appeals shall include appeals from the decisions of the board of zoning appeals and appeals upon

reports of the board in proceedings to challenge the validity of any ordinance or map.

Section 1002. Courts Having Jurisdiction.—As used in this article, "court" means the County Court of Allegheny County with respect to zoning appeals involving land in Allegheny County and, in other counties, the common pleas court of the county in which the land involved is located.

Section 1003. Who May Appeal.—Zoning appeals may be taken to court by any party before the board, or any officer or agency of the municipality.

Section 1004. Time Limitation Upon Appeal.—All zoning appeals shall be filed not later than thirty days after issuance of notice of the decision or report of the board.

Section 1005. Commencement of Zoning Appeals.—(a) Zoning appeals shall be entered as of course by the prothonotary or clerk upon the filing of a zoning appeal notice which concisely sets forth the grounds on which the appellant relies, verified to the extent that it contains averments of fact. The zoning appeal notice shall be accompanied by a true copy thereof.

(b) Upon filing of a zoning appeal, the prothonotary or clerk shall forthwith as of course, send to the board by registered or certified mail, the copy of the zoning appeal notice together with writ of certiorari commanding the board within twenty days after receipt thereof to certify to the court its entire record in the matter in which the zoning appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and owned by the board at the time it received the writ of certiorari.

(c) If the appellant is a person other than the owner of property directly involved in the decision or report of the board, the appellant, within five days after the zoning appeal is filed, shall serve a true copy of the zoning appeal notice upon such owner in the manner specified by the Rules of Civil Procedure for the service of a complaint in equity and shall file proof of such service. For identification of such owner, the appellant may relay upon the record of the board and, in the event of good faith mistakes as to such identity, may make such service nunc pro tunc by leave of court.

Section 1006. Intervention.—Within the thirty days first following the filing of a zoning appeal, the municipality and any owner or tenant of property directly involved in the decision or report of the board may intervene as of course by filing a notice of intervention, accompanied by proof of service of the same upon each appellant or each appellant's counsel or record. All other intervention shall be governed by the Rules of Civil Procedure relating to intervention in actions.

Section 1007. Transcript of Board Testimony.—The appellant, before proceeding to hearing or argument upon the zoning appeal, shall obtain and file with the court a transcript thereof.

Section 1008. Supersedeas.—At any time during the pendency of a zoning appeal, the court or a judge thereof may grant an order of super-

sedeas upon such terms and conditions, including the filing of security, as the court or judge thereof may prescribe.

Section 1009. Hearing and Argument of Zoning Appeal.—If no verbatim record of testimony before the board was made, or if upon motion, it is shown that proper consideration of the zoning appeal requires the presentation of additional evidence a judge of the court may hold a hearing to receive such evidence or may remand the case to the board or refer it to a referee to receive such evidence. Final decision of each zoning appeal shall be made by the court, or a judge thereof considering the record and the findings of fact made by the board as supplemented and replaced by findings of fact made by judge or referee. The final decision shall contain conclusions of law, and:

(1) Where the appeal is from the decision of the board, the court may reverse, affirm or modify the decision appealed.

(2) Where the appeal involves a challenge to the validity of any ordinance or map the court shall have power to declare the ordinance, map or any provisions thereof invalid and, in addition thereto, shall have power to: (i) enter judgment in favor of the landowner as provided in section 802, or (ii) stay the effect of its judgment for a limited time to give the local governing body an opportunity to modify or amend the ordinance or map in accordance with the opinion of the court.

Section 1010. Costs.—No costs shall be allowed against the board, unless it shall appear to the court that the board acted with gross negligence or in bad faith or with malice.

Section 1011. Other Types of Appeals.—For the purpose of hearing and deciding appeals from decisions with respect to the approval or disapproval of subdivision plats, other particular matters under subdivision and land development ordinances, and under the planned residential development ordinance, and the granting or refusal of permits under Article IV of this act, the procedure prescribed by this article shall be used and may be adapted, to the extent deemed necessary and convenient, by special or general order or rule of court.

Section 1012. Appellate Review.—Appeals from decisions of courts made under this act shall be taken to the Supreme Court of Pennsylvania in the manner provided for other civil cases, but no such appeal shall be entertained unless it is filed within thirty days after the date of entry of the decision of the lower court.

ARTICLE XI

Joint Municipal Planning Commissions

Section 1101. Legislative Finding and Declaration of Policy.—For the purpose of promoting health, safety, morals and the general welfare of the various areas in the Commonwealth through the effective development of such areas, the following powers for the establishment of joint municipal planning commissions are hereby granted.

Section 1102. Creation, Appointment and Operation of Joint Municipal Planning Commission.—The governing bodies of two or more municipalities may by ordinance or resolution authorize the establishment and participation or membership in and support of, a joint munici-

pal planning commission. The number and qualifications of the members of such planning commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the governing bodies. Members of a joint municipal planning commission shall serve without salary but may be paid expenses, incurred in the performance of their duties. The joint municipal planning commission shall elect a chairman whose term shall not exceed one year and who shall be eligible for reelection. The commission may create and fill such other offices as it may determine. Every joint municipal planning commission shall adopt rules for the transactions, findings and determinations, which record shall be a public record. Each participating or member municipality may from time to time, upon the request of the joint municipal planning commission, assign or detail to the commission any employes of the municipality to make special surveys or studies.

Section 1103. Finances, Staff and Program.—(a) The governing bodies of municipalities shall have the authority to appropriate funds for the purpose of contributing to the operation of a joint municipal planning commission. A joint municipal planning commission, with the consent of all the governing bodies, may also receive grants from the Federal or State governments, or from individuals or foundations, and shall have the authority to contract therewith. Every joint municipal planning commission shall have the power to appoint such employes and staff as it may deem necessary for its work, and contract with planners and other consultants for the services it may require to the extent permitted by its financial resources. Each such commission may also perform planning services for any municipality which is not a member thereof and may charge fees for the work. A joint municipal planning commission may also prepare and sell maps, reports, bulletins or other material and establish reasonable charges therefor.

(b) A joint municipal planning commission may provide planning assistance and do planning work, including surveys, land use studies, urban renewal plans, technical services and other elements of comprehensive planning and planning effectuation programs in and for any participating or member municipality; and for this purpose may, with the consent of all the governing bodies, accept and utilize any funds, personnel or other assistance made available by the Federal or State governments or any of their agencies, or from individuals or foundations, and for the purposes of receiving and using Federal or State planning grants for provision of urban planning assistance may enter into agreements or contracts regarding acceptance or utilization of the funds or assistance.

Section 1104. Preparation of Comprehensive Plan.—Every joint municipal planning commission shall prepare and maintain a comprehensive plan, in accordance with the provisions of this act, for the guidance of the continuing development of the area encompassed by the participating or member municipalities.

Section 1105. Cooperation Among Joint Municipal Planning Commission, Municipalities and Others.—Every joint municipal planning

commission shall encourage the cooperation of the participating municipalities in matters which concern the integrity of the comprehensive plan or maps prepared by the commission, and, as an aid toward coordination, all municipalities and public officials shall upon request furnish to the joint municipal planning commission within a reasonable time the available maps, plans, reports, statistical or other information such commission may require for its work.

Section 1106. Established Regional Planning Commission.—Municipalities which are presently participating in an existing regional planning commission may elect to comply with and be governed by the provisions of this act.

Section 1107. Saving Clause.—The passage of this act and the repeal by it of any prior enabling laws relating to regional planning shall not invalidate any regional planning commission created under such other laws. This act, in such respect, shall be deemed a continuation and codification of such prior enabling laws.

ARTICLE XII

Repeals

Section 1201. Specific Repeals.—The following acts and parts of acts and amendments thereof are repealed to the extent hereinafter specified:

(1) Section 12, act of May 16, 1891 (P. L. 75), entitled "An act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys, providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs and expenses thereof upon the property benefited, and the construction of sewers and payment of the damages, costs and expenses thereof, including damages to private property resulting therefrom," as to cities of the second class A, incorporated towns and townships of the first and second class.

(2) Sections 1151, 1152, 1153, 1154, 1155, 1156, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1711, 1721, 1722, 2706, 2707, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209 and 3210, act of February 1, 1966 (P. L. 1656), known as "The Borough Code," absolutely.

(3) Sections 2001, 3015, 3016, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3107.1, 3107.2, 3108, 3109, 3110, 3111, 3201, 3202 and 3203, act of June 24, 1931 (P. L. 1206), known as "The First Class Township Code," reenacted and amended May 27, 1949 (P. L. 1955), absolutely.

(4) Sections 2901, 2902, 2903, 2904, 2905, 2906, 3701, 3702, 4001, 4002, 4003, 4004, 4005, 4006, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4110, 4111, 4112, 4113, 4114, 4120, 4121, 4122, 4123, 4124, 4125, 4126, 4127, 4128 and 4129, act of June 23, 1931 (P. L. 932), known as "The Third Class City Code," reenacted and amended June 28, 1951 (P. L. 662), absolutely.

(5) Sections 1201-A, 1202-A, 1203-A, 1204-A, 1205-A, 1206-A, 1207-A, 1208-A, 1907.1, 1907.2, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2051, 2052, 2053, 2054, 2055, 2056 and 2057, act of May 1, 1933 (P. L. 103), known as "The Second Class Township Code," reenacted and amended July 10, 1947 (P. L. 1481), absolutely.

(6) The act of April 18, 1945 (P. L. 258), entitled "An act requiring cities, boroughs, towns and townships to notify adjacent political subdivisions of proposed streets, roads and highways leading into them," as to cities of the second class A and third class, boroughs, incorporated towns and townships of the first and second class.

(7) Sections 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038 and 2039, act of August 9, 1955 (P. L. 323), known as "The County Code," absolutely.

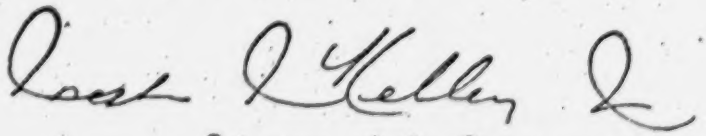
(8) Sections 2201 through 2211 and 2220 through 2239, act of July 28, 1953 (P. L. 723), known as the "Second Class County Code," in so far as they relate to counties of the second class A.

Section 1202. General Repeal.—All other acts and parts of acts are repealed in so far as they are inconsistent herewith, but this act shall not repeal or modify any of the provisions of the "Public Utility Law," or any laws administered by the Department of Highways of the Commonwealth of Pennsylvania.

APPROVED—The 31st day of July, A. D. 1968.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 247.



Secretary of the Commonwealth.

BUCKS COUNTY PLANNING COMMISSION

ADMINISTRATION BUILDING
FRANKLIN C. WOOD, Executive Director

DOYLESTOWN, PENNSYLVANIA 18901
Telephone 215 348-2911

WILLIAM F. GREENAWALT, Chairman — HAROLD O. GROSS, Jr., Vice Chairman — MILDRED T. IMRIE, Secretary
ELINORE R. RIDGE — JOSEPH BARNESS — HOBART G. BIEHN — JOSEPH C. ELDER, Sr.
A. MARLYN MOYER, Jr. — GEORGE A. BEECH, Jr.

May 15, 1969

	Type Contract	Consulting Agency	Contract Amount	Subsidation	
Milford Township	701	B.C.P.C.	$ 5,830	2/3 Federal -	$3,887
Richland	701	B.C.P.C.	3,987	2/3 Federal -	2,658
Haycock Township	701	B.C.P.C.	4,940	2/3 Federal -	3,293
Springfield Township	701	B.C.P.C.	6,430	2/3 Federal -	4,287
West Rockhill	Cash	B.C.P.C.	1,563	--	
Tinicum	Cash	B.C.P.C. (sublet to W. Detweiler)	5,700	100% County -	5,700
East Rockhill	Cash	A. Gershen, Assoc.	10,800		
Dublin	No Fee	B.C.P.C.	--	100% County	
Richlandtown	No Fee	B.C.P.C.	--	100% County	
TOTAL			$37,687		$ 19,825

A-3

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

93.1

JOHN GIAGNOCAVO	:	March 69
	:	Term
VS.	:	
151c	:	No. 1136
MILFORD TOWNSHIP SUPERVISORS: Henry Klausfelder, Ray Heffentrager, Melvin Bauman	:	In Equity

INJUNCTION

AND NOW, this 9th day of March, 1969, the Milford Township Supervisors are hereby restrained from adopting the General Plan for Milford Township until further order of the Court.

AND furthermore, a Rule is granted upon the Defendant(s) to show cause why the temporary injunction should not be made permanent, ~~and meanwhile enjoining defendants from proceeding with the adoption of the plan submitted to~~

Rule returnable April 21, 1969

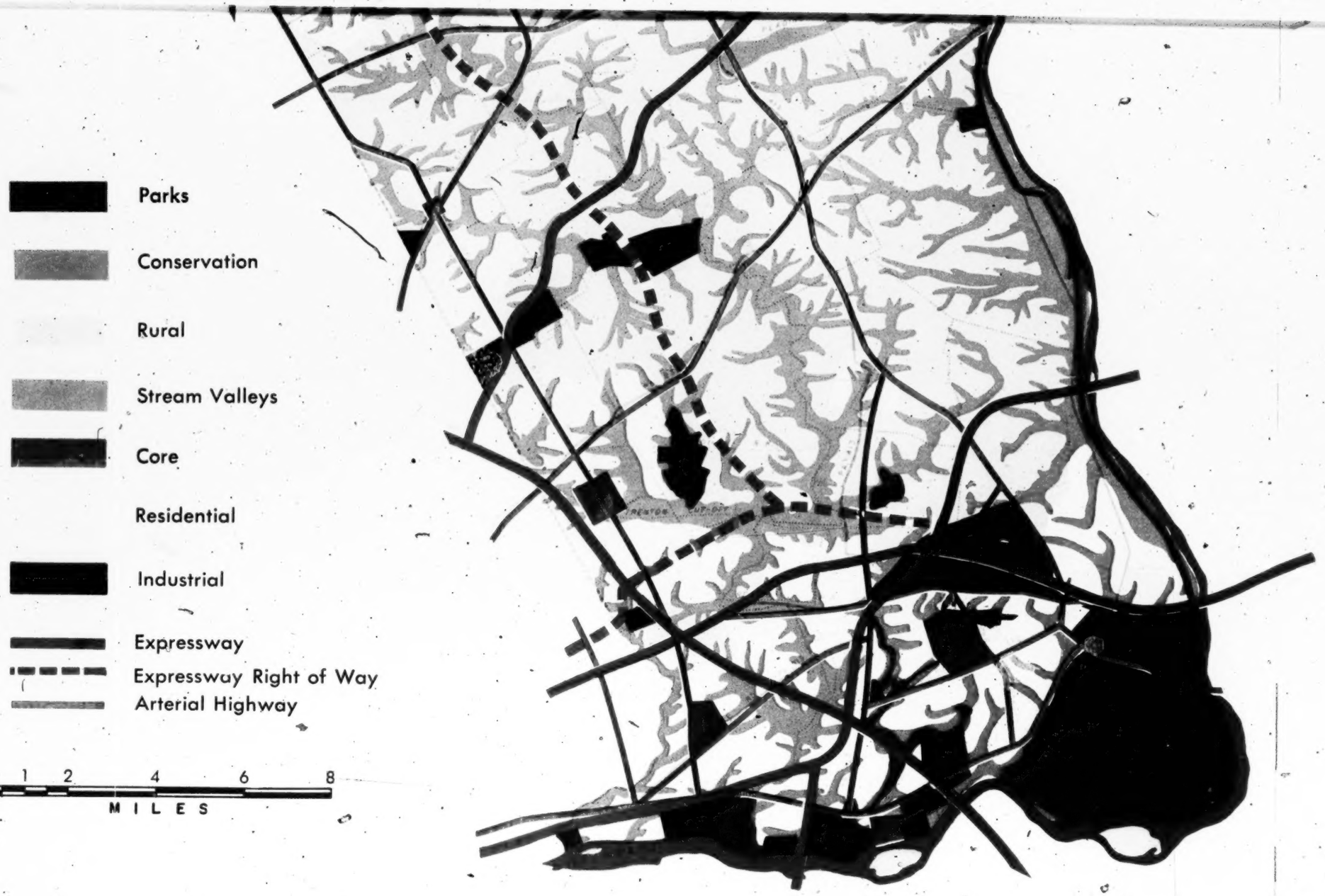
Hearing date set: _____.

Clarence R. Diemer
J.

...unty of Bucks, S. S.
...7th I, do hereby certify that the Within
...and foregoing is a true and attested copy
...of Injunction
...in the within entitled case as the same re-
...mains on file in the Court of Common Pleas
Charles Edward Loux Prothonotary

APPENDIX A-4

N



COMPREHENSIVE PLAN
BUCKS COUNTY PLANNING COMMISSION

1980 PLAN
BUCKS COUNTY, PENNSYLVANIA

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 1239

JOHN GIAGNOCAVO
Appellant

VS.

BUCKS COUNTY COMMISSIONERS:
Joseph Canby
Walter Farley
Charles Meredith III
Appellees

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

OPPOSITION TO APPELLEES MOTION TO DISMISS

TO THE HONORABLE JUSTICES OF THE SAID COURT:

The Appellant, John Giagnocavo, respectfully urges this Honorable Court to deny the Appellees Motion to Dismiss. The reasons are as follows:

In response to the Appellees' Motion to Dismiss, the contention of 1. A is denied. The Appeal in the United States Supreme Court was timely filed. The authority for Appeal from a final judgment is found in Statute 28 U.S.C. Sec. 1257, para.2, and the time for appeal is found in 28 U.S.C. Sec. 2101 (c). A Petition for a Re-hearing was filed within ten days of the decision of the lower court, and the final judgment was rendered on October 9, 1969. The Motion is attached hereto and marked Appendix B-1.

Paragraph 1. B is likewise without merit, as February 23, 1970 was a legal holiday; therefore, date for timely filing was on February 24, 1970, pursuant to Rule 34 of the United States Supreme Court Rules.

The interpretation of the foregoing acts, relative to timely appeals is specifically spelled out in the case of United States v. Healy, 376 U.S. 75, 84 S.Ct.553, 11 LEd 2nd 527:

> "The period for seeking review by the United States Supreme Court in a civil case whether by appeal or by certiorari begins to run from date of the lower courts denial of the appealing party's petition for a re-hearing rather than from the date of the lower courts original entry of judgment, where the petition for a re-hearing is filed in the lower court within the period allowed for appealing from the original judgment."

In response to Paragraph 2 of the Appellees' Motion, it is denied. The federal questions sought to be reviewed were raised in the original pleadings of both Equity No. 783, March Term, 1969, and its amendment, No. 2018, March Term, 1969. Both Complaints were initiated by a Rule to Show Cause which were signed by the Court as to why a preliminary injunction should not issue. Neither were properly answered by the Appellee. There is no provision under the Pennsylvania Rules of Civil Procedure to file preliminary objections to a Rule to Show Cause when the Plaintiff, (or Petitioner) objects. The Plaintiff specifically objected - see page 3 of the transcript of April 17, 1969, before the Honorable Edmund V. Ludwig.

Incidentally, Judge Ludwig did approach Peter Glascott, Counsel for the Appellee, privately, in the lawyers lounge, about setting the preliminary objections down for immediate argument. The Appellees declined to take up the challenge.
Therefore, under Pennsylvania law the preliminary objections are null and void. See Consolidated Real Estate Co. v. Northumberland Co. 80 D & C 279.

In response to Appellee's Motion, Para.2, C,D, it is expressly denied that the Pennsylvania Supreme Court's dismissal rests completely on a non-federal basis.

The Bucks County Court specifically upheld the validity of Act 247 of the 1968 General Assembly. Onpage 56 of the transcript of April 24, 1969, under Judge Paul R. Beckert, the Attorney for the Appellee stated,

> " Mr. Giagnocavo has raised very fundamental questions here regarding the constitutionality of this Act and the County's proceed- under the Act,... ".

There is no question that the federal questions existed, not only in the Bucks County Court but also in the Pennsylvania Supreme Court. The Appellee has stated no statute or rule which the Appellant has ignored, therefore, the Appellant avers there is none; also the transcripts from the Bucks County Court were not available to the Appellant until after the appeal was dismissed.

> " It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdiction of this court by putting forward non-federal grounds of decision which are without any fair or substantial support." Wolfe v. North Carolina, 364 US 177 L Ed 2d 1030.

> " Of course a federal question is involved if the adequacy of state procedural bars to the assertion of federal questions is itself a federal question." Douglas v. State of Ala. Ala. 1965,85 S. Ct. 1074, 380 U.S. 415, 13 L Ed.2d 934. Also Henry v. State of Miss., 1965 85 SCt. 564, 379 U.S. 443, 13 L Ed, 2d 408.

In response to Paragraph 3 of the Appellee's Motion to Dismiss, this also is denied.

The question before this Court is the constitutionality of Act 247, known as the Pennsylvania Municipalities Planning Code, which the Appellee has reference thereto, and the Bucks County Comprehensive Plan.

The reference to the validity of the Milford Township Zoning Ordinance is not the question before this Court. The document entitled "Injunction" as referred to on page6 of Appellant's Jurisdictional Statement has not been disposed of by the Bucks County Court.

See Hudson Dist. v. Eli Lilly & Co.,377 U.S 386.

> " An affirmative by a states highest Court of a judgment declaring that a state fair trade act does not violate the state constitution or the Federal Constituiton is not rendered non-final and unappealable to the Supreme Court of the United States under 28 USC 1257, by the fact that separate and unresolved issues are pending in the state courts and are subject to further proceedings therein on a cross petition."

This same basic legal principle is applicable in this instant case.

CONCLUSION

There is no legal basis for the Appellee's Motion to Dismiss and Appellee has stated no authorities; therefore, in light of the foregoing the Appellant respectfully requests this Honorable Court to dismiss the Appellee's Motion to Dismiss Appeal in this instant case.

Respectfully submitted,

John Giagnocavo,
Appellant

Quakertown, R.D.2
Penna. 18951

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

APPEAL No 63 JANUARY TERM,1970

JOHN GIAGNOCAVO :

MARCH TERM,1969

VS. : COURT OF COMMON PLEAS OF BUCKS

NO. 783 COUNTY

BUCKS COUNTY COMMISSIONERS:
JOSEPH CANBY :
WALTER FARLEY
CHARLES MEREDITH III :

IN EQUITY & MANDAMUS

PETITION FOR RE-ARGUMENT (RECONSIDERATION)
RE: DISMISSAL OF APPEAL FROM APPEAL NOS.63 &44

COMES NOW the Appellant and moves this Honorable Court to rescind the Orders dismissing Appeal Nos. 63 and 44, for the following reasons, and also to consolidate Appeal No. 44 with Appeal No. 63.:

1. The Supreme Court of Pennsylvania has mandatory jurisdiction in all appeals from the refusal of the Court of Common Pleas to grant an injunction. See 12P.S.Sec. 1102, 1879,June 12, P.L. 177 Sec.1. " In all cases in equity, in which a special or preliminary injunction has been refused by any court of common pleas, an appeal to the supreme court for the proper district shall be allowed, but the pendency of such appeal shall not suspend proceedings in the original suit; and all such appeals shall be heard by the supreme court in any district in which it may be in session, as is provided in cases in equity originating in the supreme court."

2. Attached hereto is an Order as received by the Appellant on August 20,1969, and marked Exhibit A-1.

3. The Bucks County Court of Common Pleas denied an injunction requested by Appellant on April 24,1969, in equity in Case No 783, March Term, 1969. It is admitted that equity and mandamus are together in this particular action. However, the injunction was the equity part of the action for which mandamus was insufficient. This injunction was refused by Judge Paul Beckert, on April 24,1969.

APPENDIX B-1

4. On April 29, 1969, Judge Issac S. Garb refused an application for an injunction , but refused to put the denial in writing or on record. See paragraph 3 of Appellant's STAY OF PROCEEDINGS, Appeal No. 44 . Also see copy of Sheriff return, Exhibit A-2, attached hereto.

5. On May 16, 1969, Bucks County Court of Common Pleas through Judge Bodley refused to issue a preliminary injunction Attached hereto is a copy of the requested relief sought on that particular date., and marked Exhibit A-3.

6. In paragraphs 3,4 and 5 of the foregoing, it is crystal clear that the Court denied and refused a preliminary injuncti for the benefit of the Appellant.

7. This Court has authority by its Rule 37 to order Appeal to be consolidated.

8. It is alleged or inferred by the Appellee in Paragraph One, under New Matter in the ANSWER TO PETITION FOR STAY OF PROCEEDINGS that the issues of Appeal 44 are the same as the Action 783, now Appeal 63, so therefore Appellant h requests that Appeals be combined.

9. The grave issues in the two appeals involve rights to the Appellant which are guaranteed in the United States and Pennsylvania constitutions. To deny a hearing on appeal would be to deny Appellant equal protection, as well as due process of law.

10. It is imperative that appeals be granted because of the denial of the lower court to furnish transcripts to the Appellant as per 12 P.S. 1198.

WHEREFORE, Appellant requests that the Order of August 1 1969, be rescinded, and the Appeals be allowed, and that Appe No. 44 be consolidated with Appeal No. 63.

Respectfully submitted,

John Giagnocavo

John Giagnocavo,Appellant

Affirmed and subscribed
before me this 5
day of August,1969.

MARY R. FEIRICK, NOTARY PUBLIC
SOUDERTON BOROUGH
MONTGOMERY COUNTY
MY COMMISSION EXPIRES APR. 19, 1973

Supreme Court of Pennsylvania
Eastern District

PATRICK N. BOLSINGER
PROTHONOTARY
GEORGE W. DUNN, JR.
DEPUTY PROTHONOTARY

PHILADELPHIA, PA. 19107

August 19, 1969

Samuel S. Grary, Jr., Esq.,
County Solicitor - Bucks County,
521 Administration Building,
Doylestown, Pennsylvania 18901

In Re: John Giagnocavo, Appellant vs.
Bucks County Commissioners, Joseph Canby,
Walter Farley, and Charles Meredith, III
Nos. 44 and 63, January Term, 1970

Dear Mr. Gray:

This is to advise that the following Order has been endorsed on the Petitions to Dismiss the Appeals, filed on behalf of the Appellee in the above captioned cases:

"Aug. 18, 1969.

Petition granted.

s/ Per Curiam."

Pursuant to the said orders, the appeals have been dismissed of record with this Court, and Certificates thereof, together with the Record, will be sent to the Court of Common Pleas for the County of Bucks, at Nos. 2018, March Term, 1969, and 783, March Term, 1969, in due course.

Enclosed herewith is an Invoice, in triplicate, in the amount of $4.00 to cover the cost of issuing the Certificates of Orders. Please remit by return mail.

Very truly yours,

Patrick N. Bolsinger
Prothonotary

PNB:ENT

Enclosure

cc: Mr. John Giagnocavo,
R. D. #2,
Quakertown, Pennsylvania 18951

A-1

A-1

TO THE HONORABLE, THE JUDGE WITHIN NAMED.

Bucks County

ss:

I, F. R. Tettemer, Chief Deputy Sheriff, do hereby certify and return that I served the within Request for Injunction, Rule to Show Cause and Complaint in Equity on the Bucks County Commissioners, Joseph Candy, Walter Farley, and Charles Meredith III, the within named defendants, by handing personally to Franklin Pursell, Chief Clerk, the person in charge for the time being, at the office and place of business, Broad & Court Streets, Doylestown Borough, Bucks County, Pennsylvania, on April 29th, 1969, at 10:15 o'clock A.M., E.D.S.T., a true and attested copy of the within Request for Injunction, Rule to Show Cause and Complaint in Equity, with a notice endorsed thereon to the defendantsto file an answer within twenty days from service hereof, and making known to him the contents thereof.

So answers.

F. R. Tettemer
Chief Deputy Sheriff.

Affirmed and subscribed to before me this 1st day of May A.D. 1969.

Deputy Prothonotary.

Charles G. Jones
Sheriff.

A-2

EXHIBIT A-2

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

JOHN CIAGNOCAVO :

V. : Term March, 1969

BUCKS COUNTY COMMISSIONERS: : No. 2018
Joseph Canby
Walter Farley
Charles Meredith III : In Equity

ORDER

AND NOW, this _____ day of May, 1969, it is hereby ordered that the Bucks County Commissioners be restrained from enforcing the Bucks County Zoning Ordinance, until further order of the Court.

_____
J.

The relief sought by this motion is hereby refused and the motion is dismissed

May 16, 1969 J. Boddy
J.

A-3

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

JOHN GIAGNOCAVO :

TERM March 1969

V. :

No. 2018

BUCKS COUNTY COMMISSIONERS:
Joseph Canby :
Walter Farley
Charles Meredith III : In Equity

MOTION TO MAKE RULE RETURNABLE MAY 12, 1969, ABSOLUTE, AND ISSUE PRELIMINARY INJUNCTION

TO THE HONORABLE JUDGES OF THE SAID COURT:

COMES NOW the Plaintiff and asks this Honorable Court to make the Rule absolute, and that a preliminary injunction be granted restraining the Bucks County Commissioners from enforcing the Bucks County Zoning Ordinance which is scheduled to be effective May 19, 1969.

1. Defendant(s) failed to respond to Rule to Show Cause why an injunction should not issue.

2. Plaintiff gave notice by letter, personally handing the original to Mr. Peter Glascott, Assistant County Solicitor, copy attached hereto and marked Exhibit 1.

3. Affidavits attached hereto prove the fatal defect arising from no adequate constructive notice to the populace; and that the Plaintiff has capacity and standing to sue.

XXXXXXXXX

WHEREFORE THE PLAINTIFF will be subject to criminal penalties if the Bucks County Zoning Ordinance is allowed to go into effect, and if Plaintiff exerts his constitutional rights, and will therefore suffer irreparable harm for which there is no adequate remedy at law.

THEREFORE, Plaintiff requests that the Rule be made absolute and that the Preliminary Injunction be issued.

Respectfully submitted,

John Ciagnocavo
Quakertown, Penna.
R.D.2

STATE OF PENNSYLVANIA :
ss.
COUNTY OF BUCKS :

John Ciagnocavo, being duly affirmed according to law, deposes and says that he is the Plaintiff above named and that the facts set forth in the foregoing are true and correct to the best of his information and belief.

John Ciagnocavo

Subscribed and affirmed
before me this 16th
day of May, 1969.

Thomas P. Wackernagel
Justice of the Peace

AFFIDAVIT

I hereby certify to the Bucks County Court that I have personal knowledge that the Bucks County Commissioners did not publish the required legal notice in newspapers of general circulation in the township of Milford, located in Bucks County, or in any newspaper which has general circulation throughout the County, on the Bucks County Comprehensive Plan; nor to the best of my knowledge was any notice in any newspaper given as to where a copy of said Comprehensive Plan was available for inspection, either prior to March 12, 1969, or there after, and further, I do have information firmly believed to be highly reliable and believed to be absolutely true that there was no Comprhensive Plan in its entirety as adopted by the Bucks County Commissioners consistently available for inspection by the general populace or for sale or free, prior to March 12, 1969.

Ruth Giagnocavo

Ruth Giagnocavo
Quakertown, R.D.2, Penna.

State of Pennsylvania :
ss.
County of Bucks :

Subscribed and affirmed
before me this 16th
day of May, 1969.

Thomas P. Blackburn
Justice of the Peace

EXHIBIT 2

AFFIDAVIT

I hereby certify to the Bucks County Court that I have personal knowledge that the Bucks County Commissioners did not publish the required legal notice in newspapers of general circulation in the township of Milford, located in Bucks County, or in any newspaper which has general circulation throughout the County, on the Bucks County Comprhensive Plan; nor to the best of my knowledge was any notice in any newspaper given as to where a copy of said Comprehensive Plan was available for inspection, either prior to March 12, 1969, or thereafter, and further, I do have information firmly believed to be highly reliable and believed to be absolutely true that there was no Comprehensive Plan in its entirety as adopted by the Bucks County Commissioners consistently available for inspection by the general populace or for sale or free, prior to March 12. 1969.

George K. Brauer
George K. Brauer
Perkasie, Penna.

State of Pehnsylvania :
ss.
County of Bucks :

Sworn and subscribed
before me this 16th.
day of May, 1969.

Fred L. Krieger

FRED L. KRIEGER
NOTARY PUBLIC
EAST ROCKHILL TOWNSHIP
BUCKS COUNTY, PENNA.
MY COMMISSION EXPIRES
FEBRUARY 1, 1971

LIBRARY
SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1239

JOHN GIAGNOCAVO
Appellant

vs.

BUCKS COUNTY COMMISSIONERS :

Joseph Canby
Walter Farley
Charles Meredith III
Appellees

ON APPEAL FROM
THE SUPREME COURT OF PENNSYLVANIA

MOTION TO DISMISS

PETER A. GLASCOTT, ESQUIRE
BUCKS COUNTY SOLICITOR
ROOM 520, ADMINISTRATION BUILDING
DOYLESTOWN, PENNSYLVANIA
18901

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

JOHN GIAGNOCAVO	:	
Appellant	:	
	:	
vs.	:	
	:	NO. 1239
BUCKS COUNTY	:	
COMMISSIONERS:	:	
Joseph Canby	:	
Walter Farley	:	
Charles Meredith III	:	
Appellees	:	

MOTION TO DISMISS

TO THE HONORABLE,
THE JUSTICES OF THE SAID COURT:

The County of Bucks by its County Solicitor, Peter A. Glascott, Esquire, respectfully requests the Court to dismiss the above-captioned matter, and assigns thereto the following reasons:

1. The appeal was not filed in conformity with statute or the rules of Your Honorable Court in that:

A. The appeal is from a dismissal of a "Petition For Reconsideration of the Order Dated August 18, 1969, Dismissing the Appeals in the Above-captioned Cases". The appealable Order of the Court below was, therefore, dated August 18, 1969, and the appeal to the Supreme Court of the United States was not filed in a timely manner.

B. Appellant was granted an extension until February 6, 1970, for the filing of the record and the docketing of the appeal which was further extended under Rule 13 to February 23, 1970. The same was not filed until February 24, 1970.

2. The Federal question sought to be reviewed was not timely or properly raised in the Court below, nor has it been expressly passed upon by the Court below.

A. In the Court of Common Pleas of Bucks County, No. 783, March Term, 1969, the appellant filed a document called "A Petition for Writ of Mandamus" and attached thereto a Rule to Show Cause why a Preliminary Injunction should not issue. Answer and Preliminary Objections to the Petition and Rule to Show Cause were filed, and after hearing on the Petition for Writ of Mandamus the same was dismissed, and appellant did not request the Court to dispose of the outstanding Petition for Preliminary Injunction, and the matter is, therefore, still pending before the Court of Common Pleas of Bucks County.

B. In the Court of Common Pleas of Bucks County, No. 2018, March Term, 1969, appellant filed a Complaint in Equity requesting a Preliminary Injunction with a Rule to Show Cause why a Temporary Injunction should not issue. Preliminary Objections to the Complaint and the Rule to Show Cause were filed and appellant, without requesting hearing before the Court of Common Pleas of Bucks County, appealed "something" to the Pennsylvania Supreme Court.

C. Neither the Court of Common Pleas of Bucks County nor the Pennsylvania Supreme Court has passed upon the validity or constitutionality of the Pennsylvania Municipalities Planning Code or the Zoning Ordinance of Bucks County adopted in accordance with the said Municipalities Planning Code.

D. The dismissal by the Pennsylvania Supreme Court of the appeals of the appellant abovenamed rests on a completely non-Federal basis in that appellant simply ignored the Rules of Court and statutes concerning appeals to the Pennsylvania Supreme Court.

3. The entire matter raised by the appellant is now moot as to the appellant. The appellant's land is located in Milford Township, Bucks County, Pennsylvania, which township has enacted a zoning ordinance. Under the provisions of Section 602 of the Pennsylvania Municipalities Planning Code, the enactment by a local township of a zoning ordinance acts as a repeal pro tanto of the County zoning ordinance within that particular township. The appellant's land is, therefore, not under and subject to any provisions of the Bucks County Zoning Ordinance.

WHEREFORE, it is respectfully requested that the appeal be dismissed.

Respectfully submitted,

Peter A. Glascott

Peter A. Glascott, Esquire
Bucks County Solicitor
Room 520
Administration Building
Doylestown, Pennsylvania
18901